167-673

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 154.

ROBERT G. HEDRICK, PLAINTIFF IN ERROR,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY, JAMES G. WILSON, AND JOHN G. SANDERS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED AUGUST 10, 1894.

(15,662.)

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INDEX.

	Original.	Print.
Writ of error	1	1
Return to writ	1½	1
Citation	2	2
Acceptance of service of citation	2½	2
Caption	3	3
Transcript from circuit court of Adair county	3	3
Judgment	3	3
Order granting appeal, &c.	7	5
Order correcting record, &c.	8	5
Stipulation to extend time to file bill of exceptions	9	6
Order extending time to file bill of exceptions	10	6
Clerk's certificate	10	6
Order granting time to appellant to file briefs	11	7
Application for extension of time to file briefs for appellant	11	7
Order filing original transcript and submitting cause	12	8

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 12, 1896.

	Original.	Print.
Transcript from circuit court of Adair county	13	8
Index	13	8
Order extending time to file bill of exceptions (omitted in printing)	14	—
Stipulation to extend time to file bill of exceptions (omitted in printing)	15	—
Petition (omitted in printing)	16	—
Summons issued and returned (" ")	17	—
Order granting application of Saunders and Wilson to be made parties (omitted in printing)	18	—
Answer of A., T. & S. F. R. R. Co. (" ")	18	—
Replication to answer of A., T. & S. F. R. R. Co. (omitted in printing)	26	—
Replication to answer of Wilson and Saunders (omitted in printing)	26	—
Bill of exceptions (omitted in printing)	27	—
Evidence for plaintiff (" ")	27	—
Evidence for defendant (" ")	28	—
Exhibit 1—Certified copy of duplicate certificate of location made with warrant 8470, for 80 acres, act of 1855 (omitted in printing)	28	—
Testimony of Peter J. Rigger (" ")	29	—
Exhibit 30—Plat	30	10
2—Deed, Freeman to Lane, February 29, 1860 (offered) (omitted in printing)	30	—
Deed, Lane to Parcell, April 15, 1875 (offered) (omitted in printing)	30	—
Deed, Parcell to Smith, April 15, 1875 (offered) (omitted in printing)	31	—
3—Deed, Smith to Lane, February 2, 1878 (offered) (omitted in printing)	31	—
4—Deed, Lane to Jenkins, September 7, 1878 (offered) (omitted in printing)	31	—
5—Deed, Jenkins to Griffin, September —, 1879 (offered) (omitted in printing)	31	—
6—Deed, Jenkins to Griffin, December 23, 1881 (offered) (omitted in printing)	31	—
7—Deed, Griffin to Atteberry, December 16, 1879 (offered) (omitted in printing)	32	—
8—Deed, Atteberry to Griffin, September 9, 1860 (offered) (omitted in printing)	32	—
9—Deed, Griffin to Wilson, October 18, 1880 (offered) (omitted in printing)	32	—
10—Deed, Wilson to C., S. F. & C. R'y Co., March 11, 1887 (offered) (omitted in printing)	32	—
Deed, Wilson to Sanders, August 3, 1885, (offered) (omitted in printing)	33	—
11—Deed, Saunders to C., S. F. & C. R'y Co., March 12, 1887 (offered) (omitted in printing)	33	—
32—Agreement as to deeds (omitted in printing)	33	—

	Original.	Print.
Exhibit 33—Agreement as to facts (omitted in printing)	34	—
Testimony of Wm. A. Lane (omitted in printing)	34	—
Wm. H. Parcell, Jr. (omitted in printing)	38	—
Wm. H. Parcell, Sr. (omitted in printing)	39	—
James G. Wilson (omitted in printing)	41	—
John G. Saunders (" ")	42	—
Joseph Park (" ")	44	—
John J. Hoge (" ")	54	—
A. C. Widdecombe (omitted in printing)	67	—
Wm. McCracken (omitted in printing)	86	—
John J. Hoge (recalled) (omitted in printing	99	—
Exhibits B, C, and D (offered) (omitted in printing)	102	—
Evidence for plaintiff in rebuttal (" ")	102	—
Exhibit E—Certificate of location made with warrant 8470, for 80 acres, act of 1855, in favor of Freeman (omitted in printing)	102	—
F—Extract from tract book (offered) (omitted in printing)	103	—
G—Abstract of military locations (offered) (omitted in printing	103	—
8—Patent to Freeman (offered) (omitted in printing)	104	—
1—Letter, Commissioner to register and receiver, January 12, 1861 (omitted in printing)	104	—
J—Letter, Commissioner to register and receiver, February 15, 1887 (omitted in printing)	105	—
K—Milan, Mo., abstract, &c. (offered) (omitted in printing)	105	—
Letter, Assistant Commissioner to Widdecombe, Jan. 3, 1889 (omitted in printing)	106	—
Testimony of A. C. Widdecombe (omitted in printing)	106	—
Evidence for defendant (omitted in printing)	121	—
Testimony of Mr. Park (" ")	121	—
Exhibits F and G offered (" ")	123	—
Exhibit 30—Plat	123	11
Plaintiff's requests for instructions (omitted in printing)	123	—
Instructions given by the court at request of defendant (omitted in printing)	128	—
Exhibit A—Military bounty land warrant (omitted in printing)	129	—
Decree (omitted in printing)	130	—
Motion for new trial (" ")	133	—
Motion for new trial overruled (" ")	135	—
Judge's certificate to bill of exceptions (omitted in printing)	135	—
Motion in arrest of judgment (omitted in printing)	135	—
Affidavit for appeal (" ")	136	—
Order granting appeal, &c. (" ")	137	—
Order filing appeal bond (" ")	137	—

	Original.	Print.
Order correcting order allowing appeal	138	11
Clerk's certificate	138	12
Argument and submission	139	12
Order that lower court send up the original papers	139	12
Transcript of original papers sent up from circuit court of Adair Co.	139	13
Petition	139	13
Stipulation as to time to answer	141	14
Answer of A., T. & S. F. R. R. Co.	142	14
Replication	148	17
Motion to dismiss	153	20
Motion of Wilson to be made party defendant	154	20
Motion of Sanders to be made party defendant	154	21
Answer of Wilson and Saunders	155	21
Separate answer of Wilson	158	21
Motion for additional security for costs	162	25
Separate answer of A., T. & S. F. R. R. Co.	163	25
Motion to strike out portion of answer of Wilson and Saunders	171	30
Motion to strike out portion of answer of railroad company	172	30
Motion to strike out portion of answer of railroad company	173	31
Replication to answer of railroad company	176	33
Replication to answer of Wilson and Saunders	177	33
Agreement as to time to file bill of exceptions	177	33
Bill of exceptions	178	33
Evidence for plaintiff	179	34
Evidence for defendant	179	34
Exhibit 1—Certified copy of duplicate certificate of location made with warrant 8470, for 80 acres, act of 1855	180	35
Testimony of Peter J. Rigger	181	35
Exhibit 30—Plat	182	36
2—Deed, Freeman to Lane, February 29, 1860 (offered)	182	36
Deed, Lane to Parcell, April 15, 1875 (offered)	182	36
Deed, Parcell to Smith, April 15, 1875 (offered)	183	36
3—Deed, Smith to Lane, February 2, 1878 (offered)	183	37
4—Deed, Lane to Jenkins, September 7, 1878 (offered)	183	37
5—Deed, Jenkins to Griffin, September —, 1879 (offered)	183	37
6—Deed, Jenkins to Griffin, December 23, 1881 (offered)	183	37
7—Deed, Griffin to Atteberry, December 16, 1879 (offered)	184	37
8—Deed, Atteberry to Griffin, September 9, 1860 (offered)	184	37
9—Deed, Griffin to Wilson, October 18, 1880 (offered)	184	37
10—Deed, Wilson to C., S. F. & C. R'y Co., March 11, 1877 (offered)	184	37

	Original.	Print.
Exhibit 10—Deed, Wilson to Saunders, August 3, 1885 (offered)	185	37
11—Deed, Saunders to C., S. F. & C. R'y Co., March 12, 1887 (offered)	185	38
32—Agreement as to deeds	185	38
33—Agreement as to facts	186	38
Testimony of Wm. A. Lane	186	39
Wm. H. Parcell, Jr.	190	41
Wm. H. Parcell, Sr.	191	41
James G. Wilson	193	42
John G. Saunders	194	42
Joseph Park	196	44
Exhibits B, C, and D offered	206	49
Evidence for plaintiff in rebuttal	206	50
Exhibit E—Certificate of location made with warrant 8470, for 80 acres, act of 1855, in favor of Freeman	206	50
F—Extract from tract book (offered)	207	50
G—Abstract of military locations (offered)	207	50
H—Patent to Freeman (offered)	207	51
I—Letter, Commissioner to register and receiver, January 12, 1861	208	51
J—Letter, Commissioner to register and receiver, February 15, 1887	208	51
K—Milan, Mo., abstract, &c. (offered)	209	51
Letter, Assistant Commissioner to Widdecombe, January 3, 1889	209	52
Testimony of A. C. Widdecombe	210	52
Evidence for defendant	224	60
Testimony of Mr. Park (recalled)	224	60
Exhibits F and G offered	226	61
Exhibit 31—Plat	227	61
Plaintiff's requests for instructions	227	62
Instructions given at request of defendant	231	64
Exhibit A—Military bounty land warrant	233	65
Motion for new trial	234	65
Motion for new trial overruled	235	66
Judge's certificate to bill of exceptions	235	66
Order extending time to file bill of exceptions	235	66
Motion in arrest of judgment	236	66
Affidavit for appeal	237	67
Judgment	238	68
Opinion	239	68
Order allowing writ of error, &c	257	83
Bond on writ of error	257	83
Order extending time to prepare transcript of record	259	84
Exhibits sent up with papers from circuit court of Adair county	260	85
Exhibit A—Application No. 42621, of Robert G. Hedrick, September 1, 1885	260	85
B—Transcript from tract book	261	86
C—Diagram	262	87
D—Abstract of warrant locations	263	88

	Original.	Print.
Exhibit E—Letter, Commissioner to register and receiver, Boonville, Mo., February 15, 1887	264	89
F—Transcript from tract book	265	90
G—Diagram	266	91
H—Letter, Commissioner to register and receiver, Boonville, Mo., January 12, 1861	266	91
Clerk's certificate	268	92
Assignment of errors	269	92
Statement of errors and designation by plaintiff in error of parts of record to be printed	272	94

1 The President of the United States to the honorable the judge of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the October term, 1893, thereof, between Robert G. Hedrick, plaintiff, and The Atchison, Topeka and Santa Fe Railroad Company and James G. Wilson and John G. Sanders, defendants, a manifest error hath happened, to the great damage of the said Robert G. Hedrick, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., within thirty days after signing the citation in said cause, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 16th day of May, in the year of our Lord one thousand eight hundred and ninety-four.

Issued at office, in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, central division, dated as aforesaid.

{ Seal of the United States Circuit Court for the Western District of Missouri, Central Division. }

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri.

Allowed by—
JAS. B. GANTT, *Judge.*

1½ [Endorsed:] No. —. United States circuit court, western district of Missouri, central division. Robert G. Hedrick *vs.* Atchison, Topeka & Santa Fe R. R. Co. *et al.* Writ of error to the supreme court of the State of Missouri. Filed May 16, 1894. Jno. R. Green, clerk.

Return to Writ.

UNITED STATES OF AMERICA, }
State of Missouri, } ss:

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Seal of the Supreme Court of Missouri.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at the city of Jefferson, this 10th day of July, A. D. 1894.

JNO. R. GREEN, *Clerk.*

2 The United States of America to The Atchison, Topeka and Santa Fe Railroad Company and James G. Wilson and John G. Sanders, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., within thirty days from and after the signing of this writ, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein Robert G. Hedrick is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable —— ——, presiding judge, division number two, of the supreme court of the State of Missouri, this 16th day of May, in the year of our Lord one thousand eight hundred and ninety-four.

JAMES B. GANTT,
Presiding Judge.

2½ [Endorsed:] United States *D.* court, western district of Missouri. Robert G. Hedrick *vs.* The Atchison, Topeka & Santa Fe Railroad Co. *et al.* Citation. Filed May 16, 1894. Jno. R. Green, clerk.

UNITED STATES OF AMERICA, } *ss:*
Western District of Missouri, }

We hereby acknowledge due service of the within citation this 24th day of May, A. D. 1894.

GARDINER LATHROP,
BEN. ELI GUTHRIE,
SAMUEL W. MOORE,
Attorney for Atchison, Topeka & Santa Fe Railroad Company, Defendant in Error.
JOSEPH PARK,
Att'y for James G. Wilson and John G. Saunders.

3 STATE OF MISSOURI, *set:*

Be it remembered that heretofore, to wit, on the 14th day of September, 1891, there was filed in the supreme court of the State of Missouri, under section 2253, Revised Statutes of Missouri, 1889, a certified copy of the judgment and order granting the appeal in a certain cause, wherein Robert G. Hedrick was appellant and The Atchison, Topeka and Santa Fe Railroad Company *et al.* were respondents; which said certified copy is in words and figures as follows, to wit:

STATE OF MISSOURI, }
County of Adair. }

In the Circuit Court, April Term, 1891.

Copy of the record entry of judgment or decree and order granting the appeal in cause No. 6339, wherein Robert G. Hedrick is plaintiff *vs.* The Atchison, Topeka and Santa Fe Railroad Company, defendant.

At the April term, 1891, on the 5th day of May, it being the 8th day of said April term, 1891, judgment was rendered in the above-entitled cause in form as follows:

ROB'T G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, JAMES G. WILSON, and JOHN G. SANDERS, Defendants. } Decree.

Now, at this day, this cause coming on to be heard, the
4 parties appear, by their respective attorneys, and answer ready for trial, and, a jury being waived, the cause is submitted to the court.

And the court, having seen and heard the allegations and proofs of the parties and being fully informed in the premises, doth find that this is an action of ejectment for the premises described in plaintiff's petition brought by the plaintiff against the defendant The Atchison Topeka & Santa Fe Railroad Company, and that the defendants Wilson and Sanders have, *own* their motion, been made parties defendant; that the said defendant railroad company is the lessee of the Chicago, Santa Fe & California Railway Company of Iowa, which company is the grantee of the defendants Wilson and Sanders by general warranty deeds for the land in controversy; that the defendant Sanders is the grantee of said Wilson for a part of said premises; that said Wilson is the grantee by *mense* conveyances of warranty of one William E. Parcells, who is the grantee of one William A. Lane by general warranty deed of date April 15th, 1875; that said Lane is the grantee of one Cavil M. Freeman by general warranty deed of date the — day of January, 1860; that on July 25th, 1860, said Freeman, at the district land office at Milan, Missouri, where said land was subject to entry, located military bounty land warrant No. 8470, act of Congress March 3rd, 1855, upon the west half (W. ½) of the southeast quarter of section twenty-eight (28), township sixty-one (61) north, range fourteen (14) west, of the fifth principal meridian (which includes the land in question), and thereupon received a certificate of entry for said west half (W. ½)
from the register of said land office, which entry was duly
5 and properly posted on the books and records of said land office by proper notations and entries in the tract books, the plat book, and the monthly abstract book, but by mistake and oversight said land was described in the application as being in range seventeen (17) instead of range fourteen (14).

That said Freeman sold said land as aforesaid and paid taxes thereon and his grantee- have ever since paid taxes thereon and exercised acts of ownership over said land, and since April, 1875, have been in the actual, constant, continuous, and uninterrupted occupancy of said premises, making lasting and valuable and permanent improvements thereon, such as fencing, dwellings and barns, and building a railroad thereon; that the plat book in the office of the county clerk of Adair county, certified by the register of the land office in 1866, shows said west half (½), in range fourteen (14), had been entered and located by said Freeman, and the books in said land office continued to show said entry of said Freeman until some time subsequent to 1874, when first alterations and additions began to be made; and the court finds that said Freeman intended to and did enter said west half, in range fourteen, and the land officers in land office at Milan, Mo., knew said intention of said Freeman, and that he intended to enter said tract and that they intended him to enter said tract, and that thereby he became and was vested and possessed of the equitable right and estate in and to said tract and became and was entitled to a patent to said land from the Government; that on September 1st, 1885, while defendants Wilson and Sanders were in the actual occupancy and possession of said premises, plaintiff, taking advantage of the mistake made in said application by his agent, A. C. Widdicombe, who was also his son-
6 in-law and an expert lawyer, who had full knowledge of the original entries and notations in said books and records of the land office, as well as of the additions, alterations, erasures, and defacements of said books and records then and now existing, made application to enter said tract of land, and did thereafter, on the 20th day of July, 1886, secure a patent for said land; and the court further finds that the plaintiff is not a purchaser of said land in good faith without notice of the defendants' estate therein, but he is charg-able with full knowledge of all the rights, equities, and estate of defendants in and to the said premises and holds the legal title, evidenced by said patent, as trustee for the defendant railroad company's lessor, the Chicago, Santa Fe & California Railway Company, and that plaintiff is not entitled to recover in this action; wherefore it is by the court considered, ordered, adjudged, and decreed that plaintiff be, and he is hereby, divested of all right, title, interest, and estate in and to the premises described in his petition as follows, to wit:

A strip of land one hundred (100) feet wide on the north and west of the Santa Fe survey and fifty (50) feet wide on the south and east of said survey through the northwest qr. of the southeast qr. of sec. 28, in township 61, of range 14; and also a tract of land one hundred (100) feet wide on each side of and along the center line of said railway company's survey from where it enters the southwest qr. of the southeast qr. of sec. 28, township 61, of range 14, at station # 7078–39 for a distance of one hundred and eleven (111) feet to station # 7079–50; from thence a tract of land fifty (50) feet in width on the north and west side of said survey for a distance of four hundred and fifty (450) feet to station # 7084; from thence

one hundred (100) feet on north and west side of said survey
7 and fifty (50) feet on south and east side of said survey for a distance of thirteen hundred and ten (1,310) feet to station # 7097–10, to where said survey leaves said last-described 40 acres and as the same is located over and across the said southwest qr. of the southeast qr. of sec. 28, twp. 61, r'ge 14, all the said described premises being the same land claimed and occupied by said railway company situate in the west half of the southeast quarter of section 28, T. 61, r'ge 14, in the county of Adair and State of Missouri, and that all the said right, title, interest, and estate accruing to plaintiff by reason of said patent be, and the same is hereby, vested in the said Chicago, Santa Fe & California Railway Company as full and completely as plaintiff might or could do so by regular warranty deed, duly executed according to law.

It is therefore ordered and adjudged that the defendants have and recover of the plaintiff their costs in this behalf expended and taxed at — dollars, and that they have execution therefor.

And on the 6th day of May, 1891, of the April term, it being the 9th day of said April term, of Adair county circuit court, the following further proceedings in this cause were had, to wit:

ROB'T G. HEDRICK)
vs. (
THE ATCHISON, TOPEKA & SANTA FE R. R. Co.)

Now comes plaintiff, by attorney, and files his affidavit for an appeal in this cause, and appeal granted as prayed for. Wherefore it
8 is ordered by the court that plaintiff have 10 days to file appeal bond, to be approved by the clerk, and 30 days to file bill of exceptions; and it is further ordered by the court that upon the filing of said appeal bond and bill of exceptions the clerk hereof will make out a complete transcript of the record and proceedings in this cause and transmit the same, duly certified, to the clerk of the Kansas City court of appeals at Kansas City, Mo.

And on May the 9th, 1891, the following further proceedings were had in vacation, to wit:

HEDRICK)
vs.) 6339.
R. R. Co.)

May 9, 1891, comes Harrington, plaintiff's attorney, and files appeal bond, which bond is approved by the clerk of this court in vacation; and at the August special term, 1891, on the 25th day of August, it being the 1st day of said August special term, 1891, the following further proceedings were had, to wit:

ROBERT G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, JAMES G. WILSON, and JOHN G. SANDERS, Defendants.

Whereas at the April term, 1891, of this court an appeal was granted to the supreme court of the State in the above-entitled cause; and whereas it appearing to the court that the clerk inadvertently wrote up the record, directing that the same be certified to the Kansas City court of appeals when it should have been to the supreme court: It is therefore ordered by the court that the
9 record be corrected, now for then, accordingly, and that the clerk hereof make out a full, true, and complete transcript of the record and proceedings in this cause and transmit the same, duly certified, to the clerk of the supreme court at Jefferson City, Mo.

In the Circuit Court of Adair County, Mo., April Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD CO. *et al.*, Defendant-.

This agreement, made and entered into this 3rd day of June, 1891, by and betwe-n Ben. Eli Guthrie and Joseph Park, attorneys of record for defendants in the above-entitled cause, and A. C. Widdecombe and James H. Johnston, attorneys for plaintiff in said cause, witnesseth: That the thirty (30) days' time originally granted the plaintiff by the court within which to prepare and file his bill of exceptions in said cause may be extended thirty (30) days for the reason that the defendants' attorneys desire further time within which to examine the bill of exceptions prepared by the plaintiff.

The court is hereby requested to grant the extension of time as herein prayed for.

A. C. WIDDECOMBE,
JAMES H. JOHNSTON, *For Pl'ff.*
BEN. ELI GUTHRIE,
Att'y for A., T. — S. F. R. R. Co., Def't.

10 In the Circuit Court of Adair County, April Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA & SANTA FE R. R. Co. *et al.*, Defendants.

The time heretofore granted plaintiff in the above-entitled cause within which he had to file his bill of exceptions is hereby extended for thirty (30) days in order that defendant- may have further time to examine plaintiff's bill of exceptions.

June 13th, 1891.

ANDREW ELLISON,
Judge of the Circuit Court of Adair Co.

STATE OF MISSOURI, }
County of Adair, } ss:

I, A. P. Hibbs, clerk of the circuit court for said State and county, do hereby certify that the above and foregoing is a true copy of record as relates to record entry of judgment, order of court granting appeal, extension of time for filing bill of exceptions, and order correcting record in the above-entitled cause as the same remains of record in my office.

[SEAL.] In testimony whereof I have hereunto set my hand and seal of said court, at Kirksville, this 29th day of Aug., 1891.

A. P. HIBBS, *Clerk.*

And afterwards, to wit, on the 19th day of December, 1892, the following proceedings were had in said cause, to wit:

11 R. G. HEDRICK, App., }
v.
A., T. & S. FE. R'Y CO. *et al.*, Resp. }

Comes now the said appellant, by attorney, and files his application for an extension of time in which to file briefs herein, which being seen and heard by the court it is ordered that said time be extended 30 days; which said application for extension of time for filing briefs herein is in words and figures as follows, to wit:

DISTRICT OF COLUMBIA, }
City of Washington. }

On this 12th day of December, A. D. 1892, before me, the undersigned, a notary public within and for the District and city aforesaid, personally appeared A. C. Widdicombe, to me well known, who, being duly sworn, upon his oath deposes and says that he is one of the attorneys of Robert G. Hedrick in the case of Hedrick *vs.* The Atchison, Topeka and Santa Fe Railroad *et al.*, on appeal to the supreme court of the State of Missouri from the circuit court of Adair county, Missouri; that at the time the said appeal was granted, in pursuance of the order of the circuit court, the clerk of the said court made out a transcript of the record in said case and transmitted the same to the Kansas City court of appeals; that this affiant, discovering the error of said circuit clerk, had him rectify said error, and soon thereafter the said clerk advised this affiant that the error had been corrected and the transcript of record in said case had been duly certified up to the supreme court of Missouri; that, notwithstanding the fact that the said clerk had so notified affiant that he had mailed a duly certified transcript of
12 the record to the supreme court, not until affiant had commenced the preparation of the abstract of record in the said cause did he discover that the said circuit clerk of Adair county had filed a certified copy of the judgment only in said case with the clerk of the supreme court, and when this discovery was made the 60

days within which an abstract of record is required to be filed by the rules of this court had lapsed. By reason of the fact of being so misinformed, and not being advised of the true facts in the case until it was to- late to comply with rule eleven (11) to print and file abstract 60 days prior to the day of hearing, this affiant complied with rule 12, and a printed abstract of record and brief has on the part of appellant been printed and copies thereof mailed and expressed to the attorney for respondents in time and in conformity with rule 12.

This affiant, in behalf of appellant, for the reasons hereinabove given, prays the court to grant appellant 30 days' additional time within which to comply with rule eleven.

A. C. WIDDICOMBE.

Sworn and subscribed to this 12th day of December, 1892.

[SEAL.] GEO. A. ARMES,
Notary Public.

And afterwards, to wit, on the 14th day of October, 1893, the following proceedings were had in said cause, to wit:

R. G. HEDRICK, App.,
v.
A., T. & S. FE R'Y Co., Resp.

Comes now the said appellant, by attorney, and files the original transcript as an exhibit in this cause and submits this cause to the court on briefs.

13 Which said transcript is in words and figures as follows, to wit:

Index.

Page.

1. Order extending time.
2. Agreement for extending time.
3. Petition.
5. Order making Wilson and Sanders parties def'ts.
6. Seperate answer of def'ts R'y Co.
13. Replication and seperate amended ans.
14. Replication to answer of def'ts Wilson and Sanders.
15. Trial proceedure.
16 & 17. Exhibit (1).
18. " (30).
19. Exhibits (2), (3), (4), (5), (6), (7), (8).
20. " (9), (10), (11).
21. Exhibit (32).
22. " (33).
23. Testimony of William A. Lane.
24. " " William H. Parcell, Jr.
25. " " William H. Parcell, Sr.
26. " " James G. Wilson.
27. " " John G. Sanders.
27. " " Joseph Park.

30. Cross-examination of Joseph Park.
31. Re-examination of Joseph Park.
32. Recross-examination — Joseph Park.
33. Deposition of John J. Hoge.
45. " " A. C. Widdicombe.
64. " " William McCracken.
76. " " John J. Hoge continued.

14–28

78. Exhibits (B), (C), (D), (E), (F).
79. " (G), (8), (1), (J).
80. " (K).
80. Testimony of A. C. Widdicombe.
82. Cross-examination of A. C. Widdicombe.
87. Testimony of Mr. Park in rebuttal.
88. Exhibit (30).
89 & 95. Plaintiff's instructions.
96. Court's instructions.
97 & 99. Defendants' instructions.
100. Exhibit (A).
101. Decree.
105. Motion for new trial.
106. Order granting and the signing bill of ex.
107. Motion in arrest of judgment.
108. Affidavit for an appeal.
109. Order granting appeal.
110. Filing and approval of bond, record entry.
111. Order court correcting order appeal.
113. Clerk's certificate.

* * * * * * *

29 Mr. Park then offered and read in evidence the certificate of the book of entries of Adair county, township 61, range 14, page 1, which reads as follows:

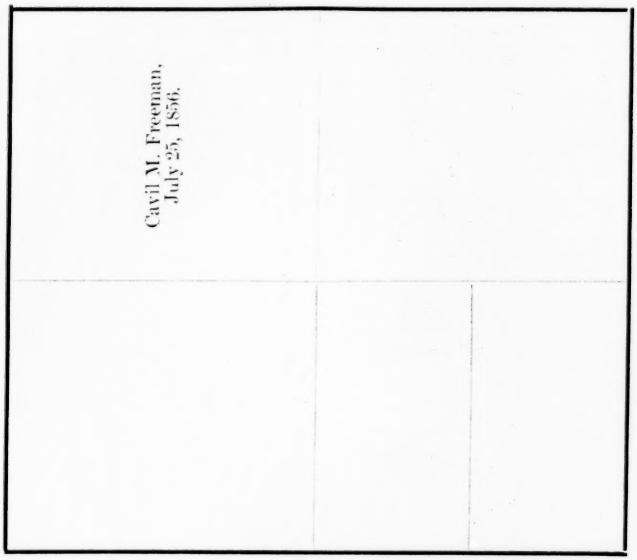
"LAND OFFICE, BOONVILLE, MO., *July* 16, 1866.

It is hereby certified that the entries recorded in this book—township plat book—have been correctly copied from
30–122 the records in this office."

Mr. Park offers and reads in evidence from said book the plat of the W. ½ of the S. E. ¼, section 28, township 61, range 14 W., as follows: "Cavil M. Freeman, July 25, 1856;" which plat is in words and figures following:

(Ex. 30.)

Section 28, *Township* 61, *Range* 14.

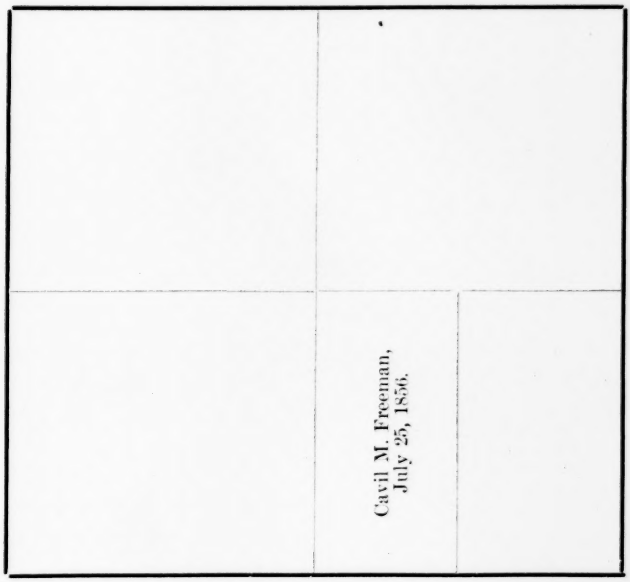


(Copied from the township plat book in the office of county clerk of Adair county.)

* * * * * * *

123–137 Mr. Guthrie offers and reads in evidence the plat book of Adair county relating to section 28, township 61, range 17, in words and figures following, to wit:

Section 28, *Township* 61, *Range* 17.



(Copied from the township plat book in the office of the county clerk of Adair county.)

EX. 30.

* * * * * * *

138 And afterwards, to wit, at the August special term, 1891, on Tuesday, August 25, 1892, it being the first day of said term, the following further proceedings were had in this cause:

ROBERT G. HEDRICK, Pl'ff,
vs.
THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, JAMES G. WILSON, and JOHN G. SAUNDERS, Def't-.

Whereas at the April term, 1891, of this court an appeal was granted to the supreme court of the State in the above-entitled cause; and whereas it appearing to the court that the clerk inadvertently wrote up the record, directing that the same be certified to the Kansas City court of appeals when it should have been to the supreme court:

It is therefore ordered by the court that the record be now corrected, now for then, accordingly, and that the clerk hereof make out a full, true, and complete transcript of the record and proceedings in this cause, and transmit the same, duly certified, to the clerk of the supreme court at Jefferson City, Missouri.

I, A. P. Hibbs, clerk circuit court for said county, hereby certify that the above and foregoing is a true and correct transcript of the record — proceedings, together with the pleadings and papers, in this cause therein stated and as called for by the bill of exceptions in said cause.

Witness my hand, as clerk, with the seal of said court, at office, in Kirksville, this the 30th day of August, 1891.

A. P. HIBBS, *Clerk.*

139 And afterwards, to wit, on the 16th day of October, 1893, the further following proceedings were had in said cause, to wit:

R. G. HEDRICK, App.,
vs.
A., T. & S. FE R'Y Co., Resp.

Comes now the said respondent, by attorney, and after argument herein submits this cause to the court.

And afterwards, to wit, on the 26th day of January, 1894, the further following proceedings were had in said cause, to wit:

R. G. HEDRICK, Resp.,
vs.
A., T. & S. FE R'Y Co., App.

Now, at this day, it appearing to the court that the appellant herein denies that the respondent's supplemental abstract of the record filed herein is correct, and in order that this court may properly determine the matters herein, under section 2257, R. S., 1889, it is ordered by the court that the clerk of the Adair county circuit court send up to this court the original papers in the above-entitled cause, including all the pleadings, bill of exceptions, and original exhibits.

Which said original papers are in words and figures as follows, to wit:

Petition.

And on the 11th day of September, 1890, there was filed in said circuit court of Adair county the following petition:

140 In the Circuit Court of Adair County, Missouri, October Term, 1890.

ROBERT G. HEDRICK
against
THE ATCHISON, TOPEKA & SANTA FE RAILROAD CO.

Plaintiff states that defendant is a corporation duly incorporated under and by virtue of the laws of the State of Kansas.

That on the 1st day of March, A. D. 1887, plaintiff was entitled to the possession of the following-described premises, to wit:

A strip of land one hundred (100) feet wide on the north and west of the Santa Fe survey and fifty (50) feet wide on the south and east of said survey through the northwest qr. of the southeast qr. of sec. 28, in township 61, of range 14; and also a tract of land one hundred (100) feet wide on each side of and along the center line of said railway company's survey from where it enters the southwest qr. of the southeast qr. of sec. 28, township 61, of range 14, at station ≠ 7078–39 for a distance of one hundred and eleven (111) feet to station ≠ 7079–50; from thence a tract of land fifty (50) feet in width on the north and west side of said survey for a distance of four hundred and fifty (450) feet to station ≠ 7048; from thence one hundred (100) feet on north and west side of said survey and fifty (50) feet on south and east side of said survey for a distance of thirteen hundred and ten (1,310) feet to station ≠ 7097–10, to where said survey leaves said last-described 40 acres and as the same is located over and across

141 the said southwest qr. of the southeast qr. of sec. 28, township 61, of range 14, all the said described premises being the same land claimed and occupied by said railway company situated in the west half of the southeast quarter of section 28, T. 61, range 14, in the county of Adair and State of Missouri; and, being so entitled to the possession thereof, the defendant afterwards, on the 1st day of May, 1887, entered into such premises and unlawfully withholds from the plaintiff the possession thereof—

To the damage of plaintiff in the sum of five hundred ($500) dollars, and plaintiff states that the monthly value of said premises is twenty dollars.

Plaintiff asks judgment for the possession of said premises, with damage to the amount of five hundred dollars ($500), and twenty dollars ($20), monthly value.

A. C. WIDDECOMBE,
Pl'ff's Att'y.

And on the 14th day of October, 1890, there was filed the following stipulation:

In the Circuit Court of Adair County, Missouri.

ROBERT G. HEDRICK, Plaintiff,
vs.
ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, Defendant.
} Stipulation.

It is hereby agreed and stipulated that the defendant in this cause shall have sixty days to answer after this court and this cause shall be continued.

A. C. WIDDECOMBE,
Pl'ff's Att'y.
BEN. ELI GUTHRIE,
Def't's Att'ys.

142 And on the 23rd day of December, 1890, there was filed the following answer of the railway company:

In the Circuit Court of Adair County, Missouri. In Vacation, 1890.

ROBERT G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, Defendant.
} Answer of Defendant Railway.

Now comes the defendant, by its attorneys, and, leave of court being first had and obtained, for answer to plaintiff's petition, denies each and every allegation in said petition, save that it admits that it is in possession of said premises described in said petition, and avers that it has good right to such possession, and by and *by and* through those under whom it claims and the laws and statutes in such cases made and provided it, long prior to the bringing of plaintiff's action, acquired good right and title to said premises and the possession thereof.

And for another and further defense defendant says that plaintiff and those under whom he claims have never been in possession of said premises or any part thereof and have never paid any taxes thereon, but defendant and its grantors have been in the actual, open, notorious, and adverse possession of said premises for more than thirty years next before the filing of plaintiff's petition in this cause, holding and claiming said premises and every part thereof as their own against all persons whomsoever, paying taxes thereon and in good faith making lasting and valuable improvements thereon.

143 And for another and further answer to plaintiff's petition defendant says that on July 25th, 1856, one Cavil M. Freeman duly and legally entered the west half (W. ½) of the southeast quarter (S. E. qr.) of section twenty-eight (28), township sixty-one (61), range fourteen (14) (which tract includes the land described in plaintiff's petition), by laying and locating thereon, under the military bounty land act of March 3, 1855, military boun*d*- land warrant No. 8470, and thereupon received from the register of the land

office at Milan, Mo., at which office land was subject to entry, a certificate of such entry, and thereupon proper notations of said entry were entered upon the tract and plat books of said office showing the facts of such location and entry.

Upon such entry said Freeman entered into the possession of said land so entered and so remained in possession thereof, paying taxes thereon, until the 29th day of February, 1860, when he by general warranty deed sold and conveyed said premises to one William A. Lane, who entered into possession thereof and paid taxes thereon until the 15th day of April, 1875, when he by general warranty deed sold and conveyed the same to one William E. Parcels, who thereupon entered into possession and paid the taxes thereon; that by means of regular mesne conveyances the right and title of said Parcells was sold and conveyed to John G. Sanders and James G. Wilson, and all of said grantees of said Parcels, including said Sanders and Wilson, entered into actual possession of said premises and improved the same in good faith and paid taxes thereon until the 1st day of January, 1887, when said Wilson and San-
144 ders, by contract, sold the premises described in plaintiff's petition to the Chicago, Santa Fe and California Railway Company of Iowa, which thereupon entered into possession thereof and commenced in good faith the construction of its line of railroad over said premises at great expense; that on the 11th day of March, 1887, said Sanders and said Wilson, in pursuance of their several contracts, conveyed said premises by their several warranty deeds to said railway company, under which company defendant, by regular conveyances, claims and owns said premises and the right to possession thereof and has in good faith made lasting and permanent and very valuable improvements thereon; that on the 20th day of July, 1886, the plaintiff, with full knowledge and notice of the location of said land warrant and the entry of said land by said Cavil M. Freeman and of the fact of the possession of said Freeman and his grantees, and also of the notations of said tract and plat books in the land office, for the purpose of cheating and defrauding the then owners of said land and their grantees, did fraudulently and willfully cause the notations on the said tract and plat books to be changed and altered, and did fraudulently enter said land and cause the patent to be issued to himself therefor, a patent from the General Government, with a view of cheating and defrauding the then owners of said land and their grantees and to secure the same, with the valuable improvements thereon; that afterwards, on the 7th day of Januray, 1887, he filed said patent for record in the office of recorder of deeds in Adair county, Missouri, and the same was duly recorded in Book Seventeen, at page 469, of the records of said office.

Defendant is informed and believes that plaintiff acted
145 through some agent or confederate *and* in making application to enter said land and in procuring said entry and said patent, but defendant does not know and has not been able to secure the name and residence of said agent. Defendant is informed and has good ground to believe that such agent had full knowledge of

all the matters and facts set up in this answer of the entry and rights of said Freeman and his grantees, and that such agent or confederate is a material witness for the defendant. Defendant is further advised and has good reason to believe that plaintiff is not a resident of this State, but where he does reside, if anywhere, defendant has not been able to ascertain. Defendant is further advised and believes that it is dangerous and unsafe for defendant to attempt to try this cause without the evidence of said agent and confederate; that the name, residence, and address of such agents are wholly and peculiarly within the knowledge of the plaintiff, as well as the other matters and things referred to in the following interrogatories, which defendant prays that plaintiff may be ordered by the court to answer under oath before the trial of this cause, so that no undue and unconscionable advantage may be taken by reason of the ignorance of the defendant:

Interrogatory 1st. Where did you reside in July, 1886, and where do you reside now?

Interrogatory 2nd. Where were you when your application was made, in July, 1886, to enter the west half (W. ½) of the southeast quarter (S. E. qr.) of section twenty-eight (28), township sixty-one (61), range fourteen (14), Adair county, Missouri?

146 Interrogatory 3rd. At whose suggestion did you undertake to enter and patent said land, and what is his residence and address now and what was it then?

Interrogatory 4th. What person or persons aided you in making said entry and securing said patent and what part did each of them do? Give the full name and the present residence and address of each of such persons, as well as their residence and address at the time.

Interrogatory 5th. What person or persons are interested with you in said land and when did they become so interested? Is the community of interest *said* between you and such person confined to this land or is it a general interest, covering this and other lands?

Defendant says that by reason of the premises plaintiff has and holds whatever title, if any, conveyed by said patent in trust for the use and benefit of defendant.

Wherefore defendant prays that plaintiff be declared a trustee for the defendant, and that whatever title, if any, he may have by reason of said entry and patent be divested out of the plaintiff and vested in this defendant, and for all other and proper relief, orders, and decrees as in equity and good conscience *and* reasonable and right, and for general relief.

And for another and further defense defendant says that defendant and its grantors have had the equitable right and title to said premises for more than twenty years next before the 20th day of July, 1886, the date of plaintiff's patent, and under such right and title defendant and its grantors have been in possession of

147 said premises for twenty years, claiming the same in fee, and that plaintiff did not commence his action under his said patent within one year next after it issued from the Government,

and by reason of his default in not so bringing his action plaintiff is forever barred to have any right, interest, or claim in and to said land and to have and maintain this action, and all his right and title, if any, evidenced by said patent have by such default, *ipso facto*, vested in this defendant.

For another and further defense defendant says that — and its immediate grantors, the Chicago, Santa Fe & California Railway Company, in good faith located their railway over said land, and have, at great expense and outlay, constructed a road-bed and builded thereon a costly railroad track and superstructure, and said road-bed, track, and superstructure constitute and make a part and parcel of its continuous line of railways from the city of Kansas, — of Missouri, to the city of Chicago, in the State of Illinois, and is in constant and daily use and occupancy as a railroad highway, and that it could not be ejected from said premises without the breaking up of said railroad highway and the distruction of its use as such; and so defendant says that if, in any event, it should turn out that plaintiff has a better right and title to said premises than this defendant and its grantors (which defendant denies), then defendant has the right to have the damages to said tract of land occasioned by reason of the location of said railroad thereover assessed, and upon payment into court of such assessment to have the same condemned to public use for the use and benefit of defendant's said railroad.

Wherefore defendant prays, if plaintiff's title be ascertained to be superior to that of defendant, that plaintiff's damages so
148 occasioned by the said location of said railroad be assessed — the said premises be condemned for public use as right of way for said railroad.

And, having fully answered, defendant asks to be discharged with its costs.

And on the 3rd day of January, 1891, there was filed the following replication:

In the Circuit Court of Adair County, State of Missouri, January Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
against
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY, Defendants.

For replication to defendants' answer, plaintiff denies that defendant or its grantees have been in the actual, open, and notorious and adverse possession of the land here in controversy for more than thirty (30) years, as alleged in said answer.

Plaintiff denies that on the 25th day of July, A. D. 1856, or at any other time, one Cavil M. Freeman made application to enter the said west half of the southeast quarter of section twenty-eight (28), in township sixty-one (61), of range fourteen (14), in Adair county, Missouri, by laying and locating thereon, under the military

bounty land act of 3rd March, 1855, military bounty land warrant No. 8470, for 80 acres, or in any other manner, and thereupon received from the register of the land office at Milan, Mo., a
149 certificate of said entry. Plaintiff denies that proper notations of such entry were made and entered upon the tract and plat book of said land office showing the fact of such location and entry.

Plaintiff denies that said Freeman ever entered into the possession of the said land alleged to have been so located or entered by him. Plaintiff charges and alleges the fact to be that the said Cavil M. Freeman was a large speculator, dealer, and locator of military land warrants at the Milan, Missouri, land office in the years 1856 and 1857, and made a great number of warrant locations both for himself and as the attorney and agent of others; that the said Cavil M. Freeman did, on the 25th day of July, A. D. 1856, apply to the register of the United States land office at Milan, Mo., to locate and did, in fact, locate with said military bounty land warrant No. 8470, for 80 acres, act of 3rd March, 1855, the west half of the southeast quarter of section twenty-eight (28), in township sixty-one (61), of range seventeen (17), in Adair county, Missouri, the said land being at the time vacant public land, and for which a patent from the United States duly issued to the said Cavil M. Freeman, and the same was received and accepted by him on or about the 23rd of March, A. D. 1860.

Whether or not the said Freeman, on the 29th day of February, 1860, by general warranty deed, sold and conveyed said premises here in controversy to one William A. Lane, who also was an attorney and large operator in the location of bounty land warrants for himself and others, this plaintiff has no knowledge or information sufficient to form a belief, and he therefore denies same.

Plaintiff denies that said William A. Lane ever entered
150 into the possession of the said premises.

That whether or not said William A. Lane, on the 15th day of April, A. D. 1875, by deed of general warranty, sold and conveyed to one William E. Parcles the land here in controversy, plaintiff has no knowledge or information sufficient to form a belief, and he therefore denies same. Plaintiff denies that the said William E. Parcels ever entered into the possession of said premises.

Whether or not by mesne conveyances the right and title of said Parcels was sold to John G. Sanders and James G. Wilson, this plaintiff has no knowledge or information sufficient to form a belief, and he therefore denies same. Plaintiff denies that all or any of said grantees of said Parcels, including said Sanders and Wilson, in good faith entered into the actual possession of said premises, or in good faith improved the same until the 1st day of January, A. D. 1887.

Whether or not the said Wilson and Sanders, by contract, sold said premises described in plaintiff's petition to the Chicago, Santa Fe and California Railway Company of Iowa, this plaintiff has no knowledge or information sufficient to form a belief, and he there-

fore denies same. Plaintiff denies that on the first day of January, A. D. 1887, the *the* Chicago, Santa Fe and California Railway Company of Iowa in good faith entered into the possession of said premises, or in good faith commenced the construction of its line — railway over said premises.

That whether or not on the 7th day of March, 1887, said
151 Sanders and Wilson, in persuance of their several contracts, conveyed said premises, by their several warranty deeds, to said railway company, this plaintiff has no knowledge or information sufficient to form a belief, and he therefore denies same. Plaintiff denies that defendant, in good faith, by regular conveyances, claims and owns said premises and the right to the possession thereof; denies that defendant, in good faith, made lasting and permanent and valuable improvements thereon.

Plaintiff denies that on the 10th day of July, 1886, or at any other time, *that* he, with full knowledge and notice or any knowledge or notice whatever of the alleged location of said warrant and the alleged entry of said land by said Cavil M. Freeman, and of the alleged possession of said Freeman and his grantees, or of the notations of said tract upon the tract and plat book- in the land office, for the purpose of cheating and defrauding the alleged owners of said land, did fraudulently and willfully cause the notations upon said tract and plat books to be changed or altered; and he denies that he ever caused any such alterations or changes to be made. Plaintiff denies that he did fraudulently enter and purchase said land, or did fraudulently cause the patent from the United States to issue to himself therefor with a view of cheating and defrauding the alleged owners of said land and their grantees.

Plaintiff avers that he applied for and purchased from the Government of the United States the land here in controversy in good faith, and without any knowledge, information, or notice of any claim of Cavil M. Freeman or his alleged grantees, and in due course received a patent from the United States for said land.

152 Plaintiff admits that he caused to be filed for record in the recorder's office of Adair county the said patent so issued to him.

Plaintiff denies that he acted through any confederate.

Plaintiff admits that he entered the said land through his agent and attorney. Plaintiff denies that he or his agent had any knowledge, information, or notice of any claim of said Freeman or his grantees in and to said land. He denies that said Cavil M. Freeman or his grantees had any rights therein of any kind whatever.

Plaintiff admits that he is not a resident of this State, but alleges that he has furnished the defendant (although not compelled or obliged so to do) with both his residence and address, as well as the name of the attorney through whom plaintiff entered the land here in controversy.

And plaintiff, in answer to the interrogatories in said answer contained, freely and cheerfully gives the information sought and desired by stating in answer to the first interrogatory that in July, A. D. 1886, he resided in the city of Indianapolis, Indiana, and that

his residence is at No. 400 East Michigan street, in said city, at this time; and in answer to the second interrogatory that he was in Indianapolis, Indiana, when application was made for the purchase of said land for him; and in answer to the third interrogatory that he had employed as his agent and attorney A. C. Widdecombe to enter lands for plaintiff, and said agent, finding said lands here in controversy to be vacant public land, made the entry for plaintiff; and in answer to interrogatory 4th plaintiff says that no other person acted in his behalf in making said entry; and in answer
153 to interrogatory 5th plaintiff states that no other person has any interest in said lands.

And, for further replication, plaintiff denies each and every other allegation in said answer contained.

A. C. WIDDECOMBE,
Att'y for R. G. Hedrick, Pl'ff.

And on the 5th day of January, 1891, there was filed the following motion:

In the Circuit Court of Adair County, Missouri, January Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA & SANTA FE R'Y CO., Defendant.

Now comes the defendant, by its attorney, and moves the court to dismiss this cause for the following reason, to wit:

Because the plaintiff at the time of the institution of this suit was and still is a non-resident of the State of Missouri and did not at the commencement of this suit file a bond for costs according to the provisions of the statute in such cases made and provided, nor has he since filed any such bond.

BEN. ELI GUTHRIE,
Att'y for Def't.

And on the same day there *was* filed the following applications of Jas. G. Wilson and John G. Sanders to be made parties:

154 In the Circuit Court of Adair County, Missouri, January Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
v.
THE ATCHISON, TOPEKA & SANTA FE RAILROAD CO., Defendant.
} Application to be Made Party.

Now comes James G. Wilson and makes application to be made a party defendant and be permitted to file an answer, and for reason therefor say- he is the grantor and warranter of the defendant and has a good defense to said action.

JOSEPH PARK,
Att'y for James G. Wilson.

In the Circuit Court of Adair County, Missouri, January Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
v.
THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, Defendant.
} Application to be Made Party.

Now comes John G. Sanders, by his attorney, and makes application to be made a party defendant in the above-entitled cause and be permitted to file an answer therein and to defend, and for reason therefor says he is the grantor and warranter of the defendant and has a good defense to plaintiff's action.

JOSEPH PARK,
Att'y for John G. Sanders.

And on the 30th day of January, 1891, there was filed the following answer of Wilson and Saunders:

155 In the Circuit Court of Adair County, Missouri, January Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD CO., Defendant.

Answer of James G. Wilson and John G. Saunders in the Adair County Circuit Court in Vacation.

Now, at this day, come James G. Wilson and John G. Saunders, and, having entered their appearance and leave of court being first had, for answer to the plaintiff's petition says—

That they deny each and every allegation in plaintiff's petition contained or any knowledge or information thereof sufficient to form a belief, except that defendant is in possession thereof.

Defendant- (Wilson and Saunders), further answering, says that they and said Atchison, Topeka and Santa Fe Railroad Company and those under whom they claim have been in the open, notorious, adverse, hostile, and exclusive possession of the said land for over thirty years, paying taxes thereon and claiming the same in fee-simple, absolute, and that the said plaintiff did not prosecute his said action within one year after his pretended title emanated from the United States.

Defendant- (Wilson and Saunders) further state that the defendants Atchison, Topeka and Santa Fe Railroad Company is their grantees, and that the said Atchison, Topeka and Santa Fe Railroad Company — a corporation running and operating a railroad over the lands sued for in plaintiff's petition, and that said rail-
156 road company is, under and by virtue of the laws of the State of Missouri, a common carrier, and said railroad is a public highway, and all the land described and sued for in plaintiff's peti-

tion is held, used, and maintained as said public highway by said def't R. R. Co.

Defendants (Wilson and Saunders), further answering, state that defendant R. R. Co. and those under whom they hold and claim title to said land, under and by virtue of regular conveyances from one Cavil M. Freeman, who applied to enter and intended to enter—

Sheet No. 2.

mistake of the register, who filed the same out, made for other *and* defendant- lands of which said applicant was wholly ignorant, and *him* and those claiming under him ever since have been ignorant of such a mistake until plaintiff procured a patent to be issued to him for said land.

Defendants, further answering, states that the said Cavil M. Freeman applied to enter, intended to enter, and did enter the land described in plaintiff's petition, entered into the immediate possession thereof, paid the taxes, and thereafter claimed the same and every part thereof, and that the written application, if it described any other or different land, the same was immediately done.

Defendant-, further answering, says that the plaintiff well knew at the time he applied to enter the land described in his petition that said Cavil M. Freeman, under whom defendants claim, had applied to enter — intended to enter the land described in his —, and with knowledge of said facts sufficient to put a prudent man upon
157 enquiry, if not with full knowledge thereof, the said plaintiff, with intent to procure an unfair and unconscionable advantage and with a view to rob defendants of what he well knew in equity and good conscience justly belonged to them, entered said land and procured a patent to be issued to himself therefor.

Wherefore defendants asks judgment that they recover of the plaintiff their costs in this behalf expended, and that the plaintiff be forever barred of all right, title, interest, claim, and demand in the land described in his petition, and that his right, title, and interest under and by virtue of his patent aforesaid shall *ipso facto* vest in the defendants' railroad, its successor or successors and assignes forever, and *and* that the said plaintiff be declared a trustee for the defendant railroad company, and the legal title divested out of him and vested in said railroad company by deed of general war-antee, and that on final hearing the plaintiff or those claiming under him be perpetually restrained from prosecuting any other or further suits at law or equity therefor, and defendants asks for all such other and further orders, judgments, and decrees as may be just and proper, and for general relief.

JOSEPH PARK,
Att'y for Defendants.

And on the same day there was filed the foilowing seperate answer of Jas. G. Wilson:

158 In the Circuit Court of Adair County, Missouri, January Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
vs.
JAMES G. WILSON, Defendant.

Answer.

Now, at this day, comes the above-named defendant and, for answer to plaintiff's petition, denies each and every allegation therein contained and any knowledge or information sufficient to form a belief, except that he is in the possession of the land described in plaintiff's petition.

Defendant, further answering, says that he is owned in fee of all the northwest qr. southeast qr. except A., T. & S. F. R. R. right of way of section 28, in township 61, range 14, in Adair county, Missouri, and that he claims title to said land by and through an entry made at the register's office in Milan, Missouri, July 25, 1856, by one Cavil M. Freeman under military land warrant No. 8470, issued to one Thomas Huelkeld, which said entry was then and there made by said Cavil M. Freeman upon the west half of the southeast quarter of section 28, in township 61, or range 14, being a part of the land for which plaintiff has sued in this behalf; that in accordance with said entry so made as aforesaid the register at said land office issued to said Cavil M. Freeman a certificate of said entry in words and figures following, to wit:

Military Bounty Land Act of March 3, 1855.

REGISTER'S OFFICE, MILAN, *July* 25, 1856.

159 Military land warrant No. 8470, in relation to Thomas Huelkeld, has this day been located by Cavil M. Freeman upon the west half of the southeast quarter of section 28, township 61, range 14, subject to any pre-emption claim which may be filed for said land within 40 days from this date; contents of tract located, 80 acres.

(Signed) J. SEAMAN, *Register.*

And then and there and at the said time said register posted upon the tract book of said land office said entry in words and figures following, to wit:

The west half of the southeast quarter, 28, 61, 14, Cavil M. Freeman, bounty land warrant No. 8470; and upon the plat book corresponding to the land aforesaid, Military land warrant 8470, Cavil M. Freeman; and upon the monthly report book of said office, The west half of the southeast quarter, 28, 61, 14, Cavil M. Freeman.

That, in accordance with said entry made as aforesaid, Cavil M. Freeman took possession of said land, paid the taxes thereon, and made lasting and valuable improvements thereto and claimed the same in fee-simple absolute against all persons.

That on the 29th day of February, 1860, said Cavil M. Freeman, by general warrantee deed, sold and conveyed said land to William A. Lane, who entered into open, adverse, notorious, and hostile possession thereof, paid the taxes thereon, and made lasting and valuable improvements and claimed the same in fee-simple absolute.

160 That on the 15th day of April, 1875, said William A. Lane sold and conveyed said land by general warrantee deed to one William E. Parcells, who then and there entered into open, notorious, adverse, and hostile possession thereof, made lasting and valuable improvements, paid the taxes thereon, claimed the same in fee-simple absolute.

That on the 2d day of February, 1878, said William E. Parcells by trustee conveyed said land to said William A. Lane, who took open, notorious, adverse, and hostile possession thereof, paid the taxes thereon, and claimed the same in fee-simple absolute.

That on the 7th day of September, 1878, said William A. Lane, by general warrantee deed, sold and conveyed said land to John and Wesley Jenkins, who then and there entered into possession—open, notorious, adverse, and hostile—made lasting and valuable improvements thereon, paid the taxes thereon, and claimed the same in fee-simple absolute.

That on the 18th day of September, 1879, John and Wesley Jen-, by general warrantee deed, conveyed said land to John M. Griffin, who then and there took open, notorious, adverse, and hostile possession of the same, made lasting and valuable improvements thereon, paid the taxes thereon, claimed the land in fee-simple absolute.

That on the 16th day of December, 1879, John M. Griffin and wife, Maggie, by general warrantee deed, conveyed said land to C. W. Atterberry, who took open, notorious, adverse, and hostile possession thereof, made valuable improvements, paid the taxes thereon, and claimed said land in fee-simple absolute.

That on the 9th day of September, 1880, C. W. Atterberry,
161 by general warrantee deed, conveyed said land to John M. Griffin, who took open, notorious, adverse, and hostile possession of the same, made valuable improvements thereon, paid the taxes thereon, and claimed the same in fee-simple absolute.

That on the 18th day of October, 1880, John M. Griffin, by general warrantee deed, conveyed said land to James G. Wilson, who took open, notorious, adverse, hostile, and exclusive possession thereof, has made lasting and valuable improvements thereon, and is now in possession of the northwest qr. of the southeast qr. thereof, and claims the same in fee-simple absolute.

And defendant, further answering, says that all the records in relation to said entry appears upon the records of the land office at Boonville, Missouri, as herein set forth, and that the plaintiff, with full notice of the facts and the equities of defendant, and of his possession of the said land for over 30 years, and of his improvements thereon, and of his claim to said title, and in fraud of his rights, procured to be issued a patent to said land with the intent

and purpose of obtaining an unconscionable, unfair, and fradulent advantage of this defendant.

Defendant, further answering, says that those under whom he claims have been in possession of said land for more than 20 years and have an equitable right and title thereto, and for more than 20 years under which he and those under whom he claims has had a right of action by the statutes of this State, and that during all said years, before said patent was procured by plaintiff, defendant and those under whom he claims claimed said land in fee, and that plaintiff procured his said patent to be issued on the 20th

162 day of July, 1886, and commenced his action to recover said land, returnable to the January term, 1891, of the Adair county circuit court, being more than one year after said patent emenated from the Government of the United States. Wherefore defendant asks judgment and to recover of the plaintiff his costs in this case expended, and that this court enter a decree that the plaintiff be forever barred of all right, title, interest, claim, or demand in the land described in his petition, and that his right and title under and by virtue of his patent aforesaid shall, *ipso facto*, vest in defendant, his heirs and assigns forever, and that said plaintiff be declared the trustee for the defendant and those claiming under him and the legal title devested out of him and vested in this defendant or those claiming under him by deed of general warranty, and that on final hearing the plaintiff be perpetually enjoined from prosecuting any other or further suit or suits at law or equity therefor; and defendant asks for all such other orders, judgments, and decrees as to the court may seem just and proper and for general relief.

JOSEPH PARK,
Att'y for Def't.

And on the 27th day of April, 1891, there was filed the following motion:

In Circuit Court of Adair County, Missouri, April Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
v.
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY, Defendant.

Motion for Additional Security.

163 Now comes the defendant and moves court for a rule upon the plaintiff to give additional security for costs for the following reasons:

Because plaintiff has not filed a sufficient bond.

Because he has not filed any bound for costs, as required by the rule of this court made at its last term.

Because the alleged bond filed by plaintiff has no security on it.

Because R. W. Withlaw, who signs the paper-writing filed by

plaintiff, is not a sufficient security and is not able to pay the costs and has no property subject to execution.

BEN. ELI GUTHRIE,
JOSEPH PARK,
Att'y- for Defendant.

And on the 28th day of April, 1891, there was filed the following separate answer of the defendant railway company:

In the Circuit Court of Adair County, Missouri, April Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA & SANTA FE RAILROAD CO. *et al.*, Defendants.

Now comes the defendant railway company, by its attorneys, and, leave of court first being had and obtained, for separate answer to plaintiff's petition, denies each and every allegation in said petition contained, save that it admits that it is in possession of
164 said premises described in said petition and avers that it has a good right to such possession by and through those under whom it claims.

And defendant further alleges that by the laws and statutes in such cases made and provided it long prior to the bringing of plaintiff's action acquired good right and title to said premises and the possession thereof.

And for another and further defense defendant says plaintiff and those under whom he claims have never been in possession of said premises or any part thereof and have never paid any taxes thereon, but defendant and its grantors have been in actual, open, notorious, and adverse possession of said premises for more than thirty (30) years next before the filing of plaintiff's petition in this cause, holding and claiming said premises and every part thereof against all persons whomsoever, paying the taxes thereon in good faith, and making lasting and valuable *and valuable* improvements thereon.

And for another and further defense to plaintiff's petition defendant says that on July 25, 1856, one Cavil M. Freeman duly and legally entered the west half (W. ½) of the southeast quarter (S. E. qr.) of section twenty-eight (28), township sixty-one (61), range fourteen (14) (which said tract includes the land described in plaintiff's petition), by laying and locating thereon under the military bounty land act of March 3, 1855, military bounty land warrant 8470, and thereupon received of the register of the land office at Milan, Missouri, at which office the said land was subject to entry, *and* certificate of such entry.

That by accident, by mistake, or oversight the application of said Freeman failed properly to describe said land and placed it in some other range, but that it was the intention of said Free-
165 man to enter said west half hereinbefore described, as it was also the intention of the said register and receiver that he

should enter said land and locate said warrant upon said land, and thereupon J. Seaman, then the register of said land office, issued to him said certificate, in which said land was properly described as the west half of the southeast quarter of section twenty-eight (28), township sixty-one (61), of range fourteen (14), and that proper notations of such entry were made and entered upon the tract and plat books of said office, showing the facts of said location and entry; that said Freeman thereupon accepted said certificate from said register and delivered said land warrant therefor and entered into the possession of the land so entered, to wit, the said west half of the southeast quarter of section twenty-eight (28), township sixty-one (61), range fourteen (14), and so remained in possession thereof and paid taxes thereon until the 29th day of February, 1860, when he by general warranty deed sold and conveyed said premises to one William A. Lane, who entered into possession thereof and paid the taxes thereon until the 15th day of April, 1875, when he by general warranty deed sold and conveyed the same to one William E. Parcells, who thereupon entered into possession and paid the taxes thereon; that by means of regular mesne conveyances the right and title of said Parcells was sold and conveyed to John G. Sanders and James G. Wilson, and all of said grantors of said Parcells, including said Sanders and said Wilson, entered into actual possession of said premises and improved the same in good faith and paid the taxes thereon until the first of January, 1887, and said Wilson and said Sanders by their several conveyances
166 sold the premises described in plaintiff's petition to the Chicago, Santa Fe and California Railway Company of Iowa, which thereupon entered into possession thereof and commenced in good faith the construction of its line of railroad over said premises at great expense; that on the 7th day of March, 1887, said Sanders and said Wilson, in pursuance of their said several contracts, conveyed said premises by their several warranty deeds to said railway company, under which company defendant by regular conveyances claims to own said premises and the right to the possession thereof and has in good faith made lasting, permanent, and very valuable improvements thereon.

That said Cavil M. Freeman nor his assigns has ever at any time made any claim upon the land which by mistake was described in the application of said Freeman to locate said land warrant, nor has he nor they at any time ever been in possession of said land or paid any taxes thereon, but both he and they have at all times held and claimed the land herein in controversy as the land entered and located by the said Freeman at said time and place.

That on the 20th day of July, 1886, the plaintiff, with full knowledge and notice of the location of said land warrant and the entry of said land by said Cavil M. Freeman and the fact of the possession of the said *said* Freeman and his grantees, and also the notations of said tract and plat books in the land office, for the purpose of cheating and defrauding the then owner of said land and their grantors and of the valuable improvements aforesaid upon said land,

did fraudulently and willfully cause the notations and entries
167 of the said tract and plat books to be changed and altered, and did fraudulently enter said land and cause to be issued to himself therefor a patent thereon from the General Government with the view of cheating and defrauding the then owners of said land and their grantees and to secure the same, with the valuable improvements thereon; that afterwards, on the 7th day of January, 1887, he filed said patent for record in the office of the recorder of deeds in Adair county, Missouri, and the same was duly recorded in Book 17, at page 469, of the records of said office.

The defendant is informed and believes that one A. C. Widdecombe, who at a long time has been a practising attorney before the land office *at* Boonville, Missouri, in which office the records, books, and papers of the former office at Milan, Missouri, were then and are now kept, and who is the son-in-law of the plaintiff, was the plaintiff's agent and attorney and conducted and transacted the business for plaintiff and secured said patent to be so as aforesaid fraudulently and illegally issued; and this defendant avers that said Widdecombe at the time of making said entry and securing said patent for plaintiff and long prior thereto had full knowledge of all the facts and circumstances connected with the entry of said Freeman, and also the knowledge that said land was owned and occupied by the grantees of said Freeman and had valuable, lasting, and permanent improvements thereon; and defendant is also informed and believes that while said land is entered and patented in plaintiff's name that the said Widdecombe is the real beneficiary of said transaction, and that he has large, if not the sole, pecuniary interest in said land and is in truth and in fact the real party
168 plaintiff in interest in this action.

Defendant avers that it and its grantors have by reason of the premises acquired and become possessed of and in equity and good conscience are entitled to all the equitable right and title of said premises and every part thereof, and that it would be wholly inequitable and unjust to allow plaintiff to take said premises from them, and that in equity plaintiff is and ought to be held as a mere trustee of the legal title for the use and benefit of the defendant. Wherefore defendant prays that the plaintiff be declared a trustee for the defendant, and that whatever title he may have, if any, by reason of the said entry and patent be divested out of the plaintiff and vested in this defendant, and for all other and proper relief, orders, and decrees that should in equity and good conscience be given that are reasonable and right, and for general relief.

And for another and further defense defendant says that defendant and its grantors have had an equitable right and title to said premises for more than 20 years, under which they have had a right of action by the statute of this State, and that said land has been in possession of defendant and its grantors for more than 20 years, claiming the same in fee, and that plaintiff's said patent was issued on July 20, 1886, and that plaintiff did not commence his action in this cause within one year after his patent issued, to wit, not until the 11th day of September, 1890, more than one year

after the said patent issued from the Government as required by the statute in such cases made and provided. Wherefore defendant avers that plaintiff's action was thereby forever
169 barred and his right and title *ipso facto* vested in this defendant. Wherefore defendant prays the court to divest the plaintiff of any title which may have been in him and vest the same in the defendant's grantor, the Chicago, Santa Fe and California Railway Company.

For another and further defense defendant says that it and its immediate grantors, the Chicago, Santa Fe and California Railway Company of Iowa and the Chicago, Santa Fe and California Railway Company, in good faith located their line of railway over said land and have at great expense and outlay constructed a road bed and builded thereon a costly railroad track and superstructure; that said road-bed, track, and superstructure constitute and make a part and parcel of its continuous line of railway from the city of Kansas, in the State of Missouri, to the city of Chicago, in the State of Illinois, and is in constant and daily use and occupancy as a railway highway, and that it could not be ejected from said premises without the breaking up of said railway highway and the destruction of its use as such: that said railway highway is used not only for the public transportation of passengers and freight, but also as a United States mail road, on which the mails of the United States are transported from day to day, and that any interruption of said highway would interfere with public business and the transportation of freight and passengers and also of the mails of the United States, and so defendant says that if in the event it should turn out that plaintiff has a better right and title to said premises than this defendant and its grantors (which defendant denies), then defendant has the right to have damages to said tract of land occasioned by reason of the location of said railroad thereover assessed, and,
170 upon payment into the court of said assessment, — condemned *to* public use and benefit of defendant's said railroad. Wherefore defendant prays that if plaintiff's right and title be ascertained to be superior to that of the defendant to said tract of land that plaintiff's damages so occasioned by the said location of said railroad be assessed, and that said premises be condemned for public use as right of way for said railroad.

For another and further defense this defendant says that during the spring and summer of 1887 plaintiff had full notice and personal knowledge of the construction of defendant's said railroad over the premises aforesaid and quietly stood by and — objection or remonstrance saw defendant's grantors, the Chicago, Santa Fe and California Railway Company of Iowa and the Chicago, Santa Fe and California Railway Company, pay out and expend many thousand dollars in grading and preparing the road-bed of its said railroad and place thereon an expensive and costly superstructure, thus making a lasting and valuable and permanent improvements of great value, and of which road-bed and superstructure, now forming an indispensible and essential part of defendant's said line of railroad, defendant cannot be deprived without great and irrepa-

rable loss; that while making said improvement defendant and its grantors in good faith believed they had and held full title to said premises acquired from the defendants Wilson and Sanders, as plaintiff then and there well knew and understood, as we also further knew and understood, that defendant and its grantors have since 1887 continued to make other and further valuable and lasting improvements on said premises without any objection or remonstrance of plaintiff, and so defendant says that plaintiff
171 is and ought to be estopped to set up and maintain any right, title, claim, or estate in and to the premises aforesaid adverse to the right and title of defendant.

And for another and further defense defendant says that said land was military bounty land, and that plaintiff and those under whom he claims have not been in possession of premises or any part thereof within two years next before the bringing of the action, and so plaintiff should not be permitted to maintain this action, and defendant specially pleads the two-year statute of limitation in such cases made and provided.

BEN. ELI GUTHRIE,
Att'y for Defendant Railway Co.

And on the same day there was filed the following motion to strike out portions of Wilson and Saunders' answer:

In the Circuit Court of Adair County, Missouri, April Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, JAMES G. WILSON, and JOHN G. SAUNDERS, Defendants.

Now, at this day, comes the above-named plaintiff, by his attorneys, and moves the court to strike out that portion of defendants' Wilson and Saunders' answer which is in the following words:
172 "Defendants (Wilson and Saunders) further state that the defendants Atchison, Topeka & Santa Fe Railroad Company is their grantees, and that the said Atchison, Topeka and Santa Fe Railroad Co. — a corporation running and operating a railroad over the lands sued for in plaintiff's petition, and that said railroad company is, under and by virtue of the laws of the State of Missouri, a common carrier, and said railroad is a public highway, and all the land described and sued for in plaintiff's petition is held, used, and maintained as said public highway by said defendant railroad company"—

For the reason that said portion of said answer is frivolous and irrelevant and constitutes no defense to plaintiff's cause of action.

A. C. WIDDECOMBE AND
JAS. H. JOHNSTON,
Att'ys for Pl'ff.

And on the same day there was filed the following motion to strike out part of answer of the defendant railway:

In the Adair Circuit Court, April Term, 1891.

R. G. HENDRICKS, Plaintiff,
vs.
THE ATCHISON & TOPEKA & SANTA FE R. R. Co.

Now comes the plaintiff and moves the court to strike out all that part of defts' separate amended answer included between brackets 1 & 2, commencing at the words "for another and further defence," at the bottom of page 6, and ending with the words at end
173 of answer, "in such cases made and provided."

A. C. WIDDECOMBE,
JAMES H. JOHNSON,
F. M. HARRINGTON,
Att'y- on Pl'ff.

And on the same day there was filed the following motion to strike out part of answer of the defendant railway:

In the Circuit Court of Adair Co., April Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY, Defendants.

Now, at this day, comes the above-named plaintiff, by his attorneys, and moves the court to strike out that portion of defendant The Atchison, Topeka and Santa Fe Railroad Company's answer which is in the following words, to wit:

Defendant is informed and believes that plaintiff acted through some agent or confederate *and* in making application to enter said land and in proveing said entry and said patent, but defendant does not know and has not been able to secure the name and residence of said agent.

Defendant is informed and has good ground to believe that such agent had full knowledge of all the matters and facts set up in this answer of the entry and rights of said Freeman and his grantees, and that such agent or confederate is a material witness for the defendant.

Defendant is further advised and has good reason to be-
174 lieve that plaintiff is not a resident of this State, but where he does reside, if anywhere, defendant has not been able to ascertain.

Defendant is further advised and believes that — is dangerous and unsafe for defendant to try this cause without the evidence of said agent and confederate.

That the name, residence, and address of such agent are wholly and peculiarly within the knowledge of the plaintiff, as well as the other matters and things referred to in the following interrogatories, which defendant prays that plaintiff may be ordered by the court to answer under oath before the trial of this cause, so that no undue

and unconscionable advantage may be taken by reason of the ignorance of the defendant:

Interrogatory first. Where did you reside in July, 1886, and where do you reside now?

Interrogatory second. Where were you when your application was made in July, 1886, to enter the W. ½ of the S. E. ¼ of section 28, township 61, range 14, Adair Co., Mo.?

Interrogatory third. At whose suggestion did you undertake to enter and patent said land and what is his residence and address now and what was it then?

Interrogatory fourth. What person or persons aided you in making said entry and securing said patent and what part did each of them do?

Give the full name and present residence and address of each of such persons as well as their residence and address at the time.

Interrogatory fifth. What person or persons are interested with you in said land and when did they become so interested?

175 Is the community of — entered between you and such person confined to this land or is it a general interest covering this and other lands?

Also that portion of said answer which is in the following words, to wit:

For another and further defense defendant says that it and its immediate grantors, the Chicago, Santa Fe and California Railway Company, in good faith located their railway over said land, and have, at great expense and outlay, constructed a road-bed and builded thereon a costly railroad track and superstructure, and said road-bed, track, and superstructure constitute and make a part and parcel of its contin-ous line of railway from the city of Kansas, in the State of Missouri, to the city of Chicago, in the State of Illinois, and is in constant and daily use and occupancy as a railroad highway, and that it could not be ejected from said premises without the breaking up of said railroad highway and the destruction of its use as such; and so defendants says that if in any event it should turn out that plaintiff has a better right and title to said premises than this defendant and its grantors (which defendant denies), then defendant has the right to have the damages to said tract of land occasioned by the reason of the location of the railroad thereover assessed, and, upon payment into court of such assessment, to have the same condemned to public use, for the use and benefit of defendant'- said railroad.

Wherefore defendant prays if plaintiff's title be ascertained to be superior to that of defendant that plaintiff's damages so occasioned by said location of said railroad be assessed — the

176 said premises be condemned for public use as right of way for said railroad.

For the reason that said portions of said answer are frivolous and irrelevant and constitute no defense whatever to plaintiff's cause of action.

A. C. WIDDECOMBE AND
JAS. H. JOHNSTON,
Pl'ff's Att'ys.

And on the same day there was filed the following replication to separate answer of the railway company:

In the Circuit Court of Adair County, April Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY *et al.*, Defendants.

Now, at this day, comes the plaintiff in the above-entitled cause and for his replication to the separate amended answer of the defendant The Atchison, Topeka and Santa Fe Railroad Company, heretofore filed in said cause, says that he denys each and every allegation therein contained, and therefore prays judgment, as in his petition.

A. C. WIDDECOMBE,
JAS. H. JOHNSTON, AND
F. M. HARRINGTON,
Pl'ff's Att'ys.

177 And on the same day there was filed the following replication to the answer of defendants Wilson and Saunders:

In the Circuit Court of Adair County, Missouri, April Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY and JAMES G. WILSON and JOHN G. SAUNDERS, Defendants.

Now, at this day, comes the plaintiff in the above-entitled cause and for his reply to the separate answer of the defendants Wilson and Saunders, heretofore filed in said cause, says that he denies each and every allegation therein contained, and therefore prays judgment, as in his petition.

A. C. WIDDECOMBE AND
JAS. H. JOHNSTON,
Att'ys for Pl'ff.

And on the 25th day of June, 1891, the following bill of exceptions was filed in said cause:

In the Circuit Court of Adair County, Missouri, April Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD CO. *et al.*, Defendants.

178 This agreement, made and entered into this 3d day of June, 1891, by and between Ben. Eli Guthrie and Joseph Park, attorneys of record for defendants in the above-en-

titled cause, and A. C. Widdicombe and James H. Johnston, attorneys for plaintiff in said cause, witnesseth: That the thirty (30) days' time originally granted the plaintiff by the court within which to prepare and file his bill of exceptions in said cause may be extended thirty (30) days, for the reason that the defendants desire further time within which to examine the bill of exceptions prepared by the plaintiff.

The court is hereby requested to grant the extension of time as herein prayed.

A. C. WIDDICOMBE,
JAMES H. JOHNSTON, *For Pl'ff.*
BEN. ELI GUTHRIE,
Att'y for A., T. & S. F. R. R. Co., Def't.

In the Circuit Court of Adair County, April Term, 1891.

ROBERT G. HEDRICK, Pl'ff,
vs.
ATCHISON, TOPEKA & SANTA FE RAILROAD CO., JAMES G. WILSON, and JOHN G. SAUNDERS, Def'ts.

Be it remembered that on the trial of the above-entitled cause on the 28th day of April, 1891, the following proceedings were had:

179 The plaintiff, to sustain the issues upon his part, offered evidence as follows:

It being agreed that all documentary evidence should be admitted subject to objections at the close of the testimony, Mr. Johnson offered and read in evidence Ex. (A), which — a patent from the United States for the west ½ of the southeast ¼ of section 28, township 61, range 14, for 80 acres to Robert G. Hedrick, dated July 20, 1886, and recorded in Adair county, Missouri, January 7, 1887, in which said patent is included the land in plaintiff's petition.

It was admitted that the defendant (the railroad company) was in possession of the land in controversy at the date of the filing of the petition in this case, and has been since January 1, 1887, and that the value of the rents and profits was $1.50 per acre, and that the land in controversy contained 10 acres.

Plaintiff then rested.

The defendants, to sustain the issues upon their part, offered evidence as follows:

Mr. Guthrie offers and reads in evidence Ex. (1). This is the certified copy of the register's certificate of entry by Cavil M. Freeman of the W. ½ of the S. E. ¼ of section 28, township 61, range 14, dated July, 1856, in which Cavil M. Freeman locates land warrant # 8470 in the name — Thomas Hueldkeld upon that land, which is in words and figures following, to wit:

180 EXHIBIT 1.

(4–#207.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Nov. 7th*, 1890.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed certified copy of the duplicate certificate of location made with warrant # 8470 for 80 acres, act of 1855, is a true and literal exemplification from the paper on file in this office.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Signed) LEWIS A. GROFF,
Commissioner of General Land Office.

Military Bounty Land Act of March 3, 1855.

MILAN, MO., REGISTER'S OFFICE, *July 25th*, 1856.

Military land warrant No. 8470, in the name of Thomas Hueldkeld, has this day been located by Cavil M. Freeman upon the W. ½ S. E. ¼ of section 28, in township 61, of range 14, subject to any preemption claim which may be filed for said land within forty days from this date.

Contents of tract located, 80 acres.

J. SEAMAN, *Register.*

181 Copy Ex. (1).

By Mr. JOHNSON: We object for this reason: It is not what it purports to be upon its face. It is not a certified copy of the original certificate, but only a certified copy of a duplicate certificate.

By the COURT: The objection is overruled.

Plaintiff at the time excepted to the rulings of the court.

PETER J. RIGGER was sworn, and, being examined on the part of the defendant by Mr. Park, testified as follows:

L. You are the county clerk of Adair county, are you?

A. Yes, sir.

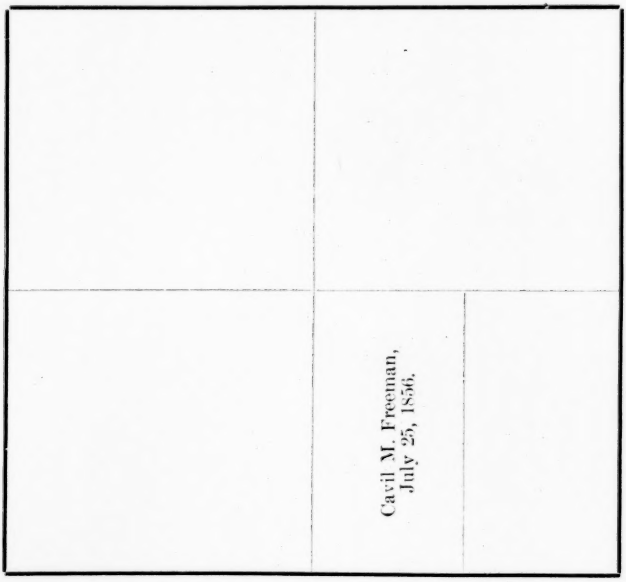
2. You may state what record that is which you have there.

A. The township plat of entries of Adair county.

Mr. Park then offered and read in evidence the certificate of the book of entries of Adair county, township 61, range 14, page 1, which reads as follows: "Land office, Boonville, Mo., July 16, 1866. It is hereby certified that the entries recorded in this book—township plat book—have been correctly copied from the records in this office."

Mr. Park offers and reads in evidence from said book the plat of the W. ½ of the S. E. ¼, section 28, township 61, range 14 W., as follows: "Cavil M. Freeman, July 25, 1856;" which plat is in words and figures following (clerk here copy Ex. 30):

182 *Section* 28, *Township* 61, *Range* 14.



(Copied from the township plat book in the office of the county clerk of Adair county.)

Mr. Guthrie offers and reads in evidence Ex. (2). This is a warranty deed, dated Feb'y 29, 1860, by Cavil M. Freeman and wife, of the county of Sullivan and State of Missouri, to Wm. A. Lane, of the same county and State; acknowledged on the 29th of Feb'y, 1860. This deed conveys, among other lands, the land in controversy—W. ½ of the S. E. ¼ of section 28, township 61, range 14, of Adair county. Recorded in the recorder's office of Adair county, Book H, page 698.

Mr. Guthrie offers and reads in evidence a warranty deed dated April 15, 1875—William A. Lane and his wife, Lizzie, of
183 Sullivan county, Mo., to Wm. E. Parcell, Jr.—conveying the W. ½ of the S. E. ¼ of section 28, township 61, range 14, of Adair county, Mo.; acknowledged on the same day before Jno. W. Halloway and found in Book Z, page 36, of recorder's office, in Adair county.

Mr. Guthrie offers and reads in evidence a deed of trust, dated April 15, 1875, from Wm. E. Parcell to W. S. Smith, trustee, Wm.

A. Lane, conveying the same land. Found in Book H, page 194, of Adair county records.

Mr. Guthrie offers and reads in evidence Ex. (3), which is a trustee deed from Smith to Wm. A. Lane, of Sullivan county and State of Missouri, conveying the land in controversy, dated Feb. 2, 1878; acknowledged on the 5th of Feb., 1878, by Jno. R. Musick; recorded in Book 1, page 548.

Mr. Guthrie then offers and reads in evidence Ex. (4), which is a general warranty deed, dated September 7th, 1878, by William A. Lane and his wife, of Sullivan county, to John Jenkins and Wesley Jenkins, of Hancock county, Ill., conveying the W. ½ of the S. E. ¼ of section 28, township 61, range 14; recorded in Book 4, page 194.

Mr. Guthrie offers and reads in evidence Ex. (5). This a deed from John and Wesley Jenkins and wives to John M. Griffin, of Macon county, Mo., dated September, 1879; acknowledged on 16 of Sept. by Wesley Jenkins and on the 18th of Sept. by John Jenkins; recorded in Adair county on the 11 of October, Book 5, page 556. This deed warrants defendants against everything except what is mentioned in it.

Mr. Guthrie offers and reads in evidence Ex. (6), which is
184 a deed from the same parties to the same parties for the same land, containing the same conditions and dated Dec. 23, 1881; acknowledged by all parties before Oliver P. Davis, Macon county, Mo.; recorded in Book 6, page 491, of the Adair county records.

Mr. Guthrie next offered and read in evidence Ex. (7), which is a general warranty deed from John M. Griffin to Cephus W. Atteberry, dated December 16, 1879, conveying the land in controversy; acknowledged December 16, 1879; recorded in Book 4, page 575.

Mr. Guthrie next offered and read in evidence Ex. (8), which is a general warranty deed from Cephus W. Atteberry and wife, of Macon county, Missouri, to John M. Griffin, conveying the same land in controversy; acknowledged on the 9th day of Sept., 1860; recorded in the Adair county records; Book 9, page 636.

Mr. Guthrie next offered and read in evidence Ex. (9), which is a general warranty deed, dated October 18, 1880, from John M. Griffin and wife, of Adair county, to James G. Wilson, conveying the land in controversy; acknowledged October 18, 1880; recorded in Book 8, page 367, of the Adair county records.

Mr. Guthrie next offered and read in evidence Ex. (10), which is a general warranty deed, dated March 11, 1887, from James G. Wilson and wife, of Adair county, Mo., to the Chicago, Santa Fe & California Railway Company of Iowa, for a tract of land 100 ft. in width on the N. and W. of said railway Co.'s survey, and a tract of land 50 ft. in width on the S. and E. side of said Co.'s survey, the same being located over and across the N. W. ¼ of the S. E. ¼ of section 28, township 61, range 14; acknowledged on the 15 of March, 1877; recorded in Book 18, page 500, of the Adair county records.

185 Mr. Guthrie next offered and read in evidence a general warranty deed, made August 3, 1885, by James G. Wilson and wife to John G. Saunders, conveying the S. W. of the S. E. of

section 28, township 61, range 14; acknowledged on the 3rd day of August, 1885, recorded in Book 15, page 531.

Mr. Guthrie next offered and read in evidence Ex. (11), which is a general warranty deed from John G. Saunders and his wife to the Chicago, Santa Fe & California Railway of Iowa for a tract of land 100 ft. in width on each side and along the center line of said railway Co.'s survey, where it enters said Saunders' land, station 7078–39, for a distance of 111 ft. to station 7979–50, and from thence a tract of land 50 ft. wide on the N. & W. side of said survey and 100 ft. on the S. & E. side of said *d*urvey for a distance of 450 ft. unto station 7084, and from thence 100 ft. on the N. & W. side of said survey and 50 ft. on the S. & E. side of said survey for a distance of 1,310 ft. to the station 7097–10 to where said survey leaves said Saunders' land, the same being located over and across the S. W. ¼ of the S. E. ¼ of section 28, township 61, range 14, Adair county, Mo.; acknowledged on the 12th of March, 1887; recorded in Book 18, page 559.

Clerk here copy Ex. (32) and (33).

It is admitted that all the deeds offered and read in evidence by the defendants are in regular form and duly acknowledged and recorded immediately after their several dates, and are on good and valuable considerations; and it is hereby agreed that said deeds need not be set out *in hæc verba* in the transcript in this
186 case; but the above and foregoing description will be all that will be required in the transcript.

(Exhibit 33.)

It is further agreed and admitted that the Chicago, Santa Fe & California Railway Company of Iowa is a railroad corporation duly organized and existing under the laws of the State of Iowa, and in 1886–'7 located and constructed this railroad through the States of Iowa and Missouri to Kansas City.

It is further admitted that the Chicago, Santa Fe & California Railway Company was a railway corporation organized under the laws of the State of Illinois and constructed the railroad in 1886–'7 from the city of Chicago to Fort Madison, in Iowa, and that on the 15th of July, 1887, said corporation became consolidated with the Chicago, Santa Fe & California Railway Company of Iowa, and purchased and became owner of the property of the latter in the Sta-e- of Iowa and Missouri, and completed the construction of said railway, making a complete line of railway from the city of Chicago, Illinois, to the city of Kansas City, Missouri.

It is further admitted that the defendant The Atchison, Topeka & Santa Fe railroad holds and is in possession of said railroad from Chicago to Kansas City under and by a regular conveyance in due form from the Chicago, Santa Fe & California Railway Company.

WILLIAM A. LANE was sworn and examined on the part of the defendant- by Mr. Guthrie, testifying as follows:

3. What is your age, Mr. Lane?
A. I am 74.
4. What is your occupation?
187 A. I am mostly a farmer.
5. You may state if you are the William A. Lane mentioned in these deeds.
A. Yes, sir.
6. Do you know Cavil M. Freeman?
A. Yes; he lived many years at Milan.
7. I'll get you to state if you know the land in controversy in this suit—this 80 acres—the W. ½ of the S. E. ¼ of section 28, range 14.
A. Yes: I have been on it.
8. You purchased this land of Freeman in '60, did you?
A. I think so.
9. Will you tell the court where Freeman is now?
A. He has been dead a good while. He died some 8 or 10 years ago, I think. I am not certain to the time.
10. I'll get you to state if you appointed an agent to take charge of this land upon your purchase of it.
A. I appointed an agent to sell it and to pay taxes on it.
11. Whom did you appoint?
A. W. S. Smith.
12. Did you sell this land to Parcell and make this conveyance as here shown?
A. Yes, Parcell wrote to me, but he bought it of Smith.
13. You did get a letter from W. H. Parcell, Sr., in regard to the matter, did you?
A. Yes.
14. If you know anything about the payment of taxes on that land while you owned it, you may state it.
188 A. Mr. Sheetz has the tax receipts there for a great number of years.

(Mr. Guthrie shows witness the receipts.)

15. Are these receipts for taxes paid on this land from '61 to '76, with the exception of the year '64?
A. Yes, sir.
16. Do you know anything about the payment of the taxes for the year of 1864?
A. My agent, Mr. Smith, paid them for me.
17. Mr. Smith has the receipt, has he?
A. Yes; I understand so.
18. You paid the taxes regularly?
A. Yes.

Mr. Guthrie then offers and reads the tax receipts in evidence from the year 1861 to the year 1876, with the exception of the year of 1864.

19. Do you know anything about the payment of the taxes prior to your ownership—for instance, the year of '57.

A. I think there is a letter there that I wrote to Mr. Hubbard.

20 (showing witness a letter). Who was Hubbard?

A. I think that he was the register of lands at Jefferson City; but I think that this letter of mine was written to Capt. Dunlap.

21. He says that the right to sell it is cancelled. What is that?

A. There was 40 acres to be sold in 1859, I think, for the taxes of 1857.

189 22. You redeemed it—paid the taxes for '57?

A. Yes, sir.

23. The taxes were paid from '57—that is, all the back taxes there was against it?

A. Yes, sir.

24. I'll get you to state now, Mr. Lane, if you have any memorandum of the tracts of land that you bought from Freeman at the time of this trade.

A. Yes.

25. Just explain all about it.

A. I sold to Freeman my shares in some goods and took this land in part payment. It took nearly 500 acres; some was in this county, some in Schuyler, and some in Grundy.

26. Is this part of it?

A. Yes.

27. Could you state the date of the transaction from any memorandum which you have?

A. I suppose it was at the time he conveyed the land to me.

Mr. Guthrie offers and reads in evidence this memorandum, which is known as Ex (12).

By Mr. JOHNSON: We object to the memorandum.

By the COURT: Consider it in.

Cross-examined by Mr. JOHNSON:

28. Mr. Lane, at the time you had this transaction with Mr. Freeman, what business was he in?

A. He was at Milan. I am not certain whether he was in the land office or not.

29. What business had he been in?

190 A. He had been in the land office. He was clerk, I think.

30. How long had he been clerk?

A. For several years. I don't know just how long. Then he sold goods afterwards.

31. Do you know if he had any business in addition to his clerkship in the land office?

A. I think that he bought and sold warrants.

32. Did he locate public lands?

A. Yes; for himself and maybe for other people.

33. Were you engaged in the same business at the time?

A. Yes.

34. Did you locate for others?

A. Yes.

WM. H. PARCELL, JR., was next sworn and examined upon the part of the defendant- by Mr. Guthrie, testifying as follows:

35. Where do you reside, Mr. Parcell?
A. In this county.
36. What is your occupation?
A. Sometimes I have been a farmer. I have been a bull-whacker.
37. You know this land in controversy?
A. Yes.
38. You have owned it?
A. Yes, sir.
39. Whom did you get it from?
A. From Smith, as agent.
40. What did you do when you bought it? Did you fence it?
A. Yes, sir.
41. Did you pay taxes on it?
A. Yes, sir.
191 42. For how many years, if you know?
A. I think for two years; I am positive of one year.
43. Who succeeded you in possession of it, if you know?
A. It fell back to Lane. The pla- was then sold to Wilson.
44. Did Wilson go into possession of it?
A. I think he did.

Cross-examined by Mr. JOHNSON:

45. Mr. Parcell, when did you buy this land?
A. I think that it was in '75.
46. How long before you went into possession of it did you purchase it?
A. I went into possession right away.
47. What improvements was there on the land when you bought it?
A. I don't think there was any.
48. Was there no fence?
A. There might have been some corraals.
49. Any fence around the land or any buildings?
A. No, sir.
50. No improvements?
A. No; not till I came.

Re-examined by Mr. GUTHRIE:

51. Speaking about these corraals, don't you remember about some posts being up there?
A. I don't know whether it was there or not. It might have been across on some other land; I could not remember.

WM. H. PARCELL, SR., was next sworn and examined on the part of the defendant- by Mr. Guthrie, testifying as follows:

192 52. You may state to the court when you first became acquainted with this land.

A. I have known that section of the country for a great many years. At one time I owned 6 80's right in there. Part of it joined this land.

53. On which side?

A. On the east.

54. How long did you own this land before your son made this purchase?

A. I think that I bought three 40's before the war.

55. Now, state to the court when you first knew of Mr. Smith being agent for this land of Mr. Lane's.

A. I don't know that I could state any time. I knew of him acting as agent. This 80 is a rough 80; it was too rough for anybody to have at the time, for the prairie was all open; the land was prairie all around. I *in*sisted Mr. Conner to fence 80 acres that I gave to his wife. This was by the *lans* tract of land that Smith was agent for. After I seen that the country was improving up I thought that I would see if this land could be bought. I didn't want to pay for it down, and Smith could not answer whether he could sell it on time or not; so I wrote Lane a letter myself. I wanted to know if it could be bought on payments. I think that I paid $50 down. I gave it to my son and helped him fence it. My impression is that was in '74, but the deed from Mr. Lane seems to be in '75.

56. Now, state if there was any evidence of any possession prior to the time you went on that land.

193 A. No; I don't know as there was any work done. There was a branch running through it. It was a stream of never-failing water. I don't remember just how it was located, but it seems to me that it was not far from the centre of the 80. There might have been some corra*a*ls there for the stock, as that was the only show for water at times; but as far as any improvements to make the farm valuable, there was none to my knowledge.

Cross-examined by Mr. WIDDICOMBE:

57. These springs were used by the public, were they?

A. If there was a great deal of rain, they were not, probably, but when it was dry they were.

58. This land wasn't used by anybody until your son improved it, in '79?

A. No, sir; it wasn't farmed. They may have used the corra*a*ls.

59. If it was used at all, it was used by everybody?

A. Yes.

Plaintiff admits possession from 1875, and that the taxes were paid.

JAMES G. WILSON was next sworn, and examined on the part of the defendant- by Mr. Guthrie, testifying as follows:

60. How old are you, Mr. Wilson?

A. 37 years old.

61. What is your occupation, and where do you live?
A. I am a farmer and live in Adair county, Mo.
62. Are you acquainted with the W. ½ of the S. E. ¼ of section 28, township 61, range 14?
A. Yes.
63. How long have you been acquainted with it?
194 A. For about 17 years.
64. Do you know who was living on it in August, 1885?
A. I don't just remember who was, just then?
65. Whose possession was it in at the time?
A. It was in mine.
66. When did you buy it?
A. In '78, I believe.
67. Did you go into possession then?
A. Yes.
68. Have you been in possession ever since?
A. Yes; part of it. I sold some of it to Saunders.
69. How long was you in possession of that part?
A. I don't know exactly.
70. You have remained in possession of the rest?
A. Yes.
71. You was in possession of the first part til- you sold it to Saunders?
A. Yes.
72. You have paid taxes on this land all the time?
A. Yes, sir.
73. You were, in August and September, 1885, and till July, 1886, in possession of this land, except the part he had sold to Saunders?
A. Yes, sir.

JOHN G. SAUNDERS was next sworn and examined on the part of the defendant- by Mr. Guthrie, testifying as follows:

74. How old are you, Mr. Saunders?
195 A. 31.
75. Where do you live and what is your occupation?
A. I live in Adair county. I am a farmer.
76. Tell the court if you were in possession of this land or any part of it in August, 1885.
A. I think I was. Along about that time I bought it.
77. Which part of it?
A. The south half of it.
78. Have you been in possession of it ever since?
A. I moved on it in September.
79. September, 1885?
A. Yes.
80. Have you lived on it ever since?
A. Yes, sir.
By the COURT: What improvements on this 80?
A. It is fenced.

By the COURT: Any house on it?
A. Yes; one with two rooms.
By the COURT: When was the house put there?
A. It was moved there in 1876.
By the COURT: Who moved it there?
A. Parcell.
By Mr. GUTHRIE: Tell the court when this railroad was built through this land of yours and Wilson's.
A. 4 years ago this spring.
81. In the spring of 1887?
A. Yes; I think that it was on the 28th of March they begun.
196 82. I'll ask you if you recollect of Mr. Widdicombe here visiting you and Mr. Wilson on that ground that spring.
A. Yes; he was there, but I wasn't on that ground. I was over south, planting corn, and he came over. That was about the first of May, I think.
83. They were working on the railroad at the time?
A. Yes, sir; you could see probably 100 teams right there at that time?
84. What was said there? What did he come for?

By Mr. JOHNSON: We object, for that portion of the answer was stricken out by the court.
By the COURT: Objection sustained.

JOSEPH PARK was next sworn and examined on the part of the defendant- by Mr. Guthrie, testifying as follows:

85. How old are you and where do you live and your occupation?
A. I am 43 years old and live at Laplata, Mo.—Macon county. I am an attorney-at-law.
86. You know Mr. A. C. Widdicombe, of Boonville, Mo.?
A. Yes, sir.
87. You know Wilson and Saunders?
A. Yes.
88. I will get you to state if you were engaged or employed by Wilson and Saunders in January, 1887, in reference to looking up any title to this land in controversy here.
A. I think it was in January, '87, they employed me to look after some claims that were brought against their lands. I went to Boonville for that purpose.
197 89. State briefly what you expected to do.
A. I went for the purpose of examining the land records there—this plat book.
90. Did you examine them?
A. Yes, sir.
91. Did you examine what was known as the tract book?
A. Yes.
92. What section, township, and range did you examine?

A. Section 28, township 61, range 14, and section 28, township 61, range 17.

93. Did you examine the entry of the land in controversy by Cavil M. Freeman?

A. Yes, sir.

(Mr. Guthrie shows witness Ex. B.) I will ask you if you recognize this.

A. Yes, sir.

94. State if it *as* a copy of the original book.

A. Yes; I think so.

95. Of the original tract book?

A. Yes; section 28, township 61, range 14.

96. Now, I'll refer you back to Jan., 1887. You may state what observations you made at that time in regard to this entry by Cavil M. Freeman to the land in controversy.

By Mr. JOHNSON: We object to what the witness discovered there.

By the COURT: Let me see that paper (Ex. B).

Witness explains Ex. (B) to the court as follows: "W. ½ of the S. E. ¼ of section 28, township 61, range 14, 80 acres; Cavil
198 M. Freeman, assignee of Thomas Hueldkeld; July 25, 1856; military land warrant #8470, dated March 3, 1853." Now, that was the numbers of the record at that time without any erasure or any interlineations. On Dec. 26, 1890, there appeared on this line this star in pencil mark and in red ink "Belongs to R. 17;" and where the words "Cavil M. Freeman" now appears is a plain erasure and mutilation, and then in larger and much later ink the name of "Cavil M. Freeman" rewritten in the same place, and where the word "military" is written is a plain erasure and a total destruction of whatever had been written there and the word "military" written in black ink at a much later date and, from its appearance, in a different handwriting from the name and the other writing that was not erased.

97. I'll ask you if you examined in your visit in January, 1887, what is known in the offices there as the plat book?

A. Yes; I did; relating to section 28, township 61, range 14.

98. Have you any recollection as to any observations you made as to the notation on the W. ½ of the S. E. ¼ of that section? And you may state what that notation was.

A. That notation was this: "Cavil M. Freeman, July 25, 1856," noted on the plat.

99. I now call your attention to what is known as Ex. (C) attached to the deposition of Wm. McCracken.

A. Yes; I saw it.

100. Did you compare it with the original?

A. Yes; the best that I could.

101. You say that you saw the ex. made.

A. Yes; it was -raced.

199 102. The condition as it shows here is correct?

A. Yes; it is correct, so far as we could make the marks; but there was so many erasures and re-markings that nothing but

a glass could show it all. (Witness then explained from Ex. C): In January, 1887, the name of "Cavil M. Freeman, July 25, 1856," appeared on the W. ½ of the S. E. ¼ of section 28, township 61, range 14, on the plat book. In Dec. 26, 1890, the W. ½ of the S. E. ¼ of section 28, township 61, range 14, didn't appear to have the name "Cavil M. Freeman" so it could be read at all. There appeared to have been erasures and mutilations; so that this plat is as correct a tracing as the register could make of it, but it scarcely reads anything at all at the present time.

103. I now call your attention to what is known as Ex. (D) in this suit attached to the deposition of Wm. McCracken. Are you familiar with that paper?

A. Yes.

104. Did you compare it with the book from which it was copied and made?

A. Yes. I saw the book from which this was made.

105. I show you now and call your attention to the column "range" and to the figure "17" and get you to state if the figure "7" is as when copied, as well as you remember.

A. I can't testify to that, but I can tell you what appeared there: Just as plain an erasure of the figure "4" where the figure "7" is written as anything can be.

106. I'll get you to state if on your visit there in Dec., 1890, you met Mr. A. C. Widdicombe.

A. Yes; I meet him.

200 107. Did he make any admissions of his relationship to this plaintiff? And you may state what these relations were.

A. I heard him under oath.

108. What did he say?

A. He said that the plaintiff in this case was his father-in-law. He was about the offices a great deal, and that he made the written application for the entry of this land, and I heard him say that he was familiar with the work of the offices.

109. Whose name did he say that he signed to that application?

A. He said that he signed his father-in-law's name by his initials, "A. C. W."

110. You may state what he said about being an expert with these books.

A. I think he said that. I know that he was.

111. Do you know how long he had been connected with those offices down there?

A. It seems to me about 16 years I am not certain.

112. What did he say about helping to get up abstracts for the different counties before that office?

A. He always represented himself to me as being an expert.

113. As having an understanding and knowledge of the books?

A. Yes, sir.

114. Did he make any admissions in your presence about his knowledge of the state of this entry at that time?

A. No; he didn't pretend to deny anything at all about the record.

115. What did he say about these erasures?

201 A. I don't say that he said anything. He was standing right by during the taking of these depositions.

116. Did he say that he knew of these erasures?

A. Well, I don't know about that.

Cross-examined by Mr. WIDDICOMBE:

117. Mr. Park, when was the first time that you were in there at Boonville?

A. I think it was in January, 1887.

118. When were you there again?

A. The day after Christmas, in last December.

119. 4 years afterwards?

A. In December, 1890, three years afterwards.

120. When you was there the first time, did you take any notes or memoranda of the records?

A. I think I did, possibly.

121. Do you know whether you did or not?

A. No, sir; I could not say positively.

122. When you was there three years afterwards, did you make any notes on what you saw?

A. No; I think not. The register made the notes.

123. Are you testifying now as to your recollection of the condition of these records in 1887 or are you testifying from notes?

A. I am testifying as to my recollection of that plat book and also as to Cavil M. Freeman's name being on that book and as to the red ink.

124. You testify from your recollection in January, 1887, and state to the court that the name of Cavil M. Freeman was then on that record, and that you remember this without any notes

202 or memoranda?

A. Yes; without any notes or memoranda, for I went there for that purpose.

125. Now, then, Mr. Park, these other names and figures that were on the book, as you have testified were there in 1887 and were not there in 1890, as you remember, did you testify to the same from your memory?

A. Yes; I have kept no notes.

126. Did you have no copies made?

A. No, sir; not in 1887. I went over to examine these entries.

127. You didn't write down or make any memoranda at all of what you saw?

A. No, sir—well, I may; I don't remember. I haven't seen it since.

128. The last time that you was there what was your business?

A. To take these depositions and to see these plat books.

129. You did take the depositions?

A. Yes; of Hoge, McCracken, and Widdicombe.

130. Did you call the attention of any of the officials of the offices at the time you were there last to the fact that the names had been changed since 1887? Did you call their attention to it?

A. I don't think that I did.

131. Did you call McCracken's attention to this erasure?

A. Yes.

132. Did you call his attention to the fact that the plat book had Freeman's name on it?

A. Yes; the plat book had Freeman's name on it both times.

203 133. In the examination of Mr. McCracken and Hoge did you say to them that in 1887 Freeman's name was there, but was not in 1890?

A. I don't remember as I did.

134. I will ask you if you examined *then* in regard to the handwriting.

A. Yes.

135. Have you stated to the court what they said about that handwriting?

A. No; they said that the "Belongs to 17 R." was in the handwriting of Mr. Reichie.

136. Who was he?

136. Who was he?

A. He was receiver in 1886, I think, or before.

137. I'll ask you if these witnesses said that these changes in there were in the handwriting of any of the officials of the land office.

A. Yes; Mr. —— —— viewed the handwriting. He said that the red ink was in the handwriting of Mr. Wright, and that the "Belongs to 17 R." was in the handwriting of Mr. Reichie, but this star business he knew nothing about. Neither did he know anything about Cavil M. Freeman's name being written there, nor about the word "military."

138. Didn't Hoge and McCracken testify that of the changes in there none were in the handwriting of Mr. Reichie?

A. No, sir.

139. Didn't you say that they didn't know anything about them?

A. Why, the name of Cavil M. Freeman and the word "military," they didn't.

204 140. Did they say so in their depositions?

A. I think that they did.

141. Didn't they testify that they thought that it was Mr. Reichie's?

A. Well, I think that they said something about that.

142. At the time that you went down there in 1887, who did you represent?

A. Saunders and Wilson.

143. You went down there to examine the records?

A. Yes, sir; to see the entries in the plat books and in the tract book.

144. You knew at that time that this patent of Hedrick's had been filed for record?

A. Yes; through them.

145. I'll ask if you represented the railroad at any time.

A. I took some acknowledgements.

146. You knew at that time that this Hedrick patent was in existence, did you not?

A. Possibly I did. I think that I know now that I didn't represent the railroad at all. There was about 9 mile of right of way down about Laplata that they had some trouble with. They finally secured the right of way, but I don't think that I had anything to do about that.

147. So you think that you didn't represent the railroad Co. in obtaining that right of way across the land in controversy?

A. No, sir; I think not. I acknowledged the deed.

Re-examined by Mr. GUTHRIE:

148. Did you make a report to your clients after your return in January, 1887?

205 A. I think that I did. That is what I went for.

149. State what you saw there to raise your apprehension as to your client's title in that land.

A. I saw that——

By Mr. JOHNSON: We object to his going over that again.

By the COURT: Objection sustained.

150. Now, then, I understand you to testify that Hoge thought that the "Belongs to 17 R." was in the handwriting of Reichie?

A. Yes; I think so.

151. Did he say what time Reichie was in office?

A. I think from 1874 to August, 1886 or 1885.

152. Did you find where Mr. Reichie was?

A. No, sir.

153. Now, then, as a matter of fact, you didn't represent the railroad at all in taking this right of way?

A. No, sir.

Recross-examination by Mr. WIDDICOMBE:

154. You say that Mr. Hoge testified that Mr. Reichie worked in the Land Office until 1886?

A. Yes; somebody did. I think that it was him.

155. Then you say that figure "7," that wasn't there in 1887, was in Reichie's handwriting?

A. No, sir.

156. Did you see that figure "7" in 1887?

A. I told you that I never seen that till the last time, and the last time I could see that there had been an erasure.

Mr. Guthrie then offered and read in evidence the depositions of Hoge, McCracken, and Widdicombe, as follows:

206 (Clerk here insert said depositions.)

(See depositions referred to above, page —.)

Mr. Guthrie then offered in evidence and read Ex. (B) attached to the deposition of Wm. McCracken, and only that portion that

relates to the land in controversy entered by Cavil M. Freeman July 25, 1856.

By Mr. JOHNSON: We object to the offering of a part of the ex. without the admission of all of it.

By the COURT: We admit it all. He just explains what he wants.

Mr. Guthrie then offered and read in evidence Ex. (C) attached to the same deposition, together with the certificate thereto.

Mr. Guthrie offers and reads in evidence Ex. (D) attached to the same deposition, together with the certificate thereto.

Defendant thereupon rested.

In rebuttal the plaintiff offered evidence as follows:

Mr. Johnson offered and read in evidence Ex. (E), being a duly certified copy, under the seal of the General Land Office, of the original certificate of location made with warrant # 8470, for 80 acres, act of 1855, in favor of Cavil M. Freeman, as the same appears on file in said office. Said copy of the original certificate bears date land office, Milan, Mo., July 25, 1856, and certifies that the attached military bounty land warrant # 8470, for 80 acres (act of 1855), was on that day received at said office from Cavil M. Freeman.

Then follows the application to locate said warrant as follows:

" I, Cavil M. Freeman, of Sullivan county, State of Mo., hereby locate the W. ½ of the S. E. ¼ of section 28, township 61, range
207 17 (seventeen), in the district of lands subject to sale at the land office at Milan, Mo., containing 80 acres, in satisfaction of the attached warrant # 8470.

Witness my hand this 25th day of July, A. D. 1856.

CAVIL M. FREEMAN.

Attest: J. SEAMAN, *Register*.

We hereby certify the above location is correct, being in accordance with law and instructions.

J. SEAMAN, *Register*."

By Mr. GUTHRIE: We object to the introduction of that instrument, because it does not relate to the land in controversy, but it is 18 miles away. It is not in 14; it is in 17.

By the COURT: It is in.

Mr. Widdicombe then offered and read Ex. (F) in evidence. This is a certified copy of a portion of the tract book belonging to the land office at Boonville, Mo., showing that Cavil M. Freeman located the W. ½ of the S. E. ¼ of section 28, township 61, range 17, with military land warrant # 8470 (act of March 3, 1855), July 25, 1856.

By Mr. GUTHRIE: We object—general objections.

Mr. Widdicombe offered and read Ex. (G) in evidence. This is a certified copy of a portion of the abstract of military locations (act Mar. 3, 1855) belonging to the United States land office at Boonville, Mo., showing that Cavil M. Freeman located the W. ½ of the S. E. ¼ of section 28, township 61, range 17, with land warrant # 8470, July 25, 1856.

Mr. Widdicome offers and reads in evidence Ex. (H). This is a duly certified copy of patent, under seal of the General Land Office, issued by the United States to Cavil M. Freeman for the
208 W. ½ of the S. E. ¼ of section 28, township 61, range 17, in satisfaction of military bounty land warrant # 8470 (act Mar. 3, 1855), said patent being dated September 10, 1859.

Mr. Johnson offers and reads in evidence Ex. (I). This is a certified copy of the letter from the Commissioner of the General Land Office, dated January 12, 1861, to the register and receiver at Boonville, Mo., as follows:

"GENTLEMEN: The location made at Milan, Mo., May 21, 1857, by Pitt Cook, of Erie county, Ohio, upon the S. E. ¼ of section 28, township 61, range 17, with land warrant # 7709, for 160 acres (act of 1855), has been cancelled for the reason that the W. ½ of the S. E. ¼ of section 28, township 61, range 17, was located July 25, 1856, with land warrant # 8470, for 80 acres (act of 1855). You will make the proper notes upon the books and plats of your office, referring to this letter by its date.

The duplicate certificate of location having been surrendered to this office by Pitt Cook, land warrant # 7709 has been returned to him.

Very respt., your obedient servant,

JOS. S. WILSON, *Commis'r.*"

Mr. Johnson offered and read in evidence Ex. (J). This is a certified copy of letter from the Commissioner of the General Land Office, at Boonville, Mo., dated Feb. 15, 1887, which reads as follows:

"GENTLEMEN: I am in receipt of your letter of Jan. 27, 1887, stating that your records show that the W. ½ of the S. E. ¼ of section
209 28, township 61, range 14, was located by Cavil M. Freeman, July 25, 1856, per warrant # 8470 (act 1855), and that you were 'shown an abstract of title from the records of Adair county, Mo., a regular chain from the said Freeman to the present occupant of the land, Mr. James H. Saunders.' In reply you are informed that Cavil M. Freeman located the W. ½ of the S. E. ¼ of section 28, township 61, range 17 W., July 25, 1856, per warrant # 8470, 80 acres (act of 1855), for which a patent was issued September 10, 1859, and you will see that your records agree with the above, as shown by the records and files in this office.

"Very respt., S. M. STOCKSLAGER,

"*Ass't Commissioner.*"

Mr. Johnson now offers and reads in evidence Ex. (K). This is a duly certified copy, under seal of the General Land Office, of so much of the Milan, Mo., monthly abstract as relates to warrant location # 8470, for 80 acres (act of 1855), made to the Commissioner of the General Land Office by the register of the said Milan office, which shows that military land warrant # 8470, for 80 acres (act of 1855), was located on the W. ½ of the S. E. ¼ of section 28, township 61, range 17, by Cavil M. Freeman, July 25, 1856.

Also a certified copy of letter from the Commissioner of the General Land Office, at Washington, dated January 3, 1889, to A. C. Widdicombe, Boonville, Mo., which reads as follows:

"SIR: In reply to your letter of the 24 ult., you are advised that the patent issued in the name of Cavil M. Freeman for the W. ½ of the S. E. ¼ of section 28, township 61, range 17 W., Mo., per his location of M. B. L. warrant # 8470, for 80 acres (act 1855), was transmitted to Messrs. Young & Niles, Washington, D. C.,
210 Mar. 23, 1860, by whom the certificate of location was surrendered.

"Very respt., T. J. ANDERSON,
"Ass'l Commissioner."

Mr. Guthrie objected to the last four Ex's (H, I, G, & K) as being incompetent, immaterial, and irrelevant.

A. C. WIDDICOMBE was next sworn and examined on the part of the plaintiff by Mr. Johnson, testifying as follows:

1. Mr. Widdicombe, where do you live?
A. Boonville, Mo.
2. How long have you resided there?
A. 26 years.
3. What business are you engaged in?
A. Attorney-at-law.
4. Have you had any practice in the United States land office at Boonville, Mo.?
A. I have had.
5. Any experience in entering land?
A. I have.
6. I'll ask if you made the entry for the land in controversy for the plaintiff Hedrick.
A. Yes; I made the application.
7. When was it done?
A. September 1st, 1885.
8. At the time you made that entry was the land vacant, as shown by the records of the land offices at Boonville, Mo.?

By Mr. GUTHRIE: We object.

211 By the COURT: Change the form of that question. Was the land subject to entry?
A. Yes; that part of it was. It was subject to cash entry, homestead, or pre-emption.
9. Did you examine the record prior to the time you made this application for Hedrick?
A. I did.
10. What book did you first examine?
A. The tract book as shown in Ex. (4).
11. What was the condition of that book at that time? What did the book show?
A. It showed as follows (witness reads from Ex. 4): "The W. ½

of the S. E. ¼ of section 28, township 61, range 14, 80 acres; Cavil M. Freeman, assignee of Thomas Hueldkeld; July 25, 1856; military land warrant # 8470, Mar. 3, 1855. Belongs to 17 R."

12. What did you next discover in that examination?

A. I undoubtedly referred to the same record, to range 17.

13. Just state what you did.

A. I referred to range 17.

14. What did you find, then, in range 17?

A. A similar description. I found a similar notation: The W. ½ of the S. E. ¼ of section 28, township 61, range 17, 80 acres; Cavil M. Freeman, assignee of Thomas Hueldkeld; July 25, 1856; military land warrant # 8470—act '55.

15. What did you do next in relation to the land in controversy and what did you discover?

A. I think that I examined the S. E. ¼ of section 28, township 61, range 17. As tract book shows, 160 acres; Pitt Cook, as-
212 signee of Thomas Long; May 21, 1857; military warrant # 7709, Mar., 1855. Noted on that entry is the following: "Cancelled Jan. 12, 1861." I think that I examined the files of the Boonville land office for that reference—Jan. 12, 1861—and examined the letter of that date from the General Land Office, which is marked Ex. (1).

16. What did you do next?

A. I made application for that land which appeared vacant in 14.

18. I'll ask you to state to the court if you had seen the land before you made this entry.

A. I never.

19. Did you know its condition?

A. No.

20. Did you know that it was in the possession of any one?

A. No.

21. Did you know it was improved?

A. No, sir.

22. Who is Mr. Hedrick?

A. My father-in-law.

23. Where does he reside?

A. In Indianapolis.

24. What is the first step taken in entering land in the United States Land Office?

A. If a party thinks that the land is vacant he fills up an application in writing, describing the land as the law prescribes and signed by the party himself or his attorney.

25. What does this application contain?

213 A. The numbers of the land, section and quarter section, township, and description in general.

26. I'll ask you if you at the time your deposition was taken in Boonville—if you examined in connection with Mr. Park, the attorney for the defendant-, these books and records that we have here in evidence.

A. Yes; I did.

27. Did you notice any mutilations or erasures of the records as

have been spoken of at that time? And, if so, tell us what they were.

A. I never noticed any obliteration or anything of the kind until my attention was called to it through the magnifying glass presented by Mr. Park. The only obliteration was the name "Freeman." There appeared to be an erasure under the name "Freeman."

28. This was on which land?

A. This was on the land in controversy.

29. What did that erasure appear to be?

A. It appeared to be—I'll state that I never noticed it till I saw it through the glass. It was apparently an erasure under the name "Freeman" and the name "Freeman" rewritten over the same place.

30. Did you distinguish what the name was that was erased?

A. No; the number of the entry, the description of the land, the date, and who paid for it are all placed on this book, and that erasure corresponded to the number made on the same date—that is, the number on the plat corresponding to the date of July, 1857. I am satisfied that this erasure was made in 1857 from the fact
214 that the number is very distinct on that little plat and by going to the entry you will find that the entry was originally posted for Freeman.

31. In whose handwriting was those changes?

A. I think that I testified in that deposition.

32. But now what do you say?

A. It all appeared to be done largely in the handwriting of the register at that time.

33. Mr. Widdicombe, I'll ask you at the time you made this examination of these records, what was the condition of them in reference to this land?

A. The records then were exactly as these exhibits show.

34. At the time you made this application for Hedrick the records were in the same condition, showed the same erasures and blurrings that they do now, did they?

A. There is no doubt about it.

35. Do you know who made these erasures, changes, or blurrings over these records?

A. No; I don't know.

36. I'll ask if it was done by you or at your instance or at your request.

A. It wasn't done by my request, at my instance, or to my knowledge.

37. Did you ever occupy any position in the United States land office?

A. Never.

38. Your connection has been as an attorney?

A. Yes, sir; always. I'll state to the court that these misspostings often occur. Previous to every notation on a book or
215 record of the land office is the application of the party. If the register makes a mistake in posting the entry, at the end

of the month, when he goes to make up his return, he is bound to discover where it ought to be. He changes it and puts it in the right place. That is all he can do.

By the COURT: What was the date of your entry?

A. September 1, 1885.

Cross-examined by Mr. GUTHRIE:

39. Did you testify that these mispostings are frequent?

A. Quite so.

40. You have ascertained this fact from your long experience there?

A. Yes.

41. You had taken notice of that fact at the time you made this entry?

A. Yes.

42. And you, at the time you made this entry, so you say, saw this notation on the tract book, that the land in 17 had been entered by Cavil M. Freeman?

A. It appeared so.

43. You saw that notation?

A. Yes.

44. At that time the red-ink notation that now appears on that book wasn't there?

A. No, no, sir.

45. Now, you then looked over to 17?

A. Yes; it refers to 17.

216 46. Now, that "Belongs to 17." That is not in the same handwriting that the balance of the notation is, is it?

A. No, sir; I think not.

47. At the time you made this application you discovered that this "Belongs to 17 R." was in a different handwriting from the original, didn't you?

A. I probably did.

48. Wouldn't you see it in an instant?

A. Yes; I think I should.

49. As a matter of fact, that "Belongs to 17 R." shows of a later date than the balance of the notation on that line, does it not?

A. Yes.

50. This "Belongs to 17 R." is in the handwriting of Mr. Reichie, is it not?

A. I think that I so testified.

51. But what is your present memory; isn't it a fact that "Belongs to 17 R." is in the handwriting of Reichie?

A. I think that it was.

52. The rest was in the handwriting of whom?

A. The register, Mr. Seaman, of 1856, I think.

53. Now, tell the court when Mr. Reichie went into office.

A. I cannot tell exactly.

64. In '74, wasn't it?

A. He was there 8 years; he went out in 1886.

55. He was succeeded by Wright?
A. Yes, sir.
56. Then he was in the office 8 years before that?
217 A. Yes, sir.
57. Have you any knowledge when Register Reichie made *any* notation or made any notation?
A. I cannot say that I have.
58. You can't say that you hav'n't, can you? Can you say that you don't know when Mr. Reichie made that notation?
A. I can't say that I knew.
59. You can't say that he didn't?
A. I can't say that I know that he didn't make it.
By the COURT: You have no recollection?
A. No, sir.
60. Am I correct in understanding you to testify that the erasures on the books as they now exist appeared there at the time you made this Hedrick entry?
A. They undoubtedly did.
61. Just as they are today?
A. Yes, sir.
62. And that these erasures and blurrings were there before you went and made this Hedrick entry?
A. I'll state in answer to your question——
By the COURT: Did you know the condition of the records?
A. The records are in the same condition today as when the Hedrick entry was made.
63. You then had full knowledge of the books?
A. I certainly did.
64. You then knew the condition of the record and had full knowledge of its condition?
218 A. I did.
65. I believe I understood you to testify at the time you made this entry you didn't know anything about this land.
A. No, sir.
66. You have been over this country, Mr. Widdicombe?
A. Some.
67. Where?
A. I have been up and down the Wabash.
68. You knew which direction this tract laid from the Wabash?
A. I expect that I did.
69. At that time?
A. Yes; I think so.
70. You knew about this country?
A. Yes.
71. You knew that that land didn't lie on the Chariton hills when you entered it?
A. I didn't know anything about the Chariton hills or this land.
72. Do you testify that you put your father-in-law's money in this land when you didn't know where it was?
A. It appeared vacant.

73. You invested your father-in-law's money in land you knew nothing about?

A. I believed it was worth the Government price.

74. Why?

A. Any land is worth the Government price; most any land is worth the Government price.

219 75. Then you think that this land is worth the Government price whether it is worth anything or not?

A. No, sir; I didn't answer it that way. Most any Government land in this country is worth the Government price.

76. Can you tell how it happened to turn out that this land was valuable improved land?

A. I could not. Now, I have understood that it wasn't very valuable.

77. Who told you?

A. Mr. Park.

78. When did he tell you that; before or after you made the entry?

A. After I made the entry.

(Mr. Guthrie gives witness Ex. A.)

79. I'll ask you if that is a correct representation of the books last December. Isn't that a correct exemplification?

A. It wouldn't contradict that certificate.

80. I'll ask you as a witness whether that is a correct exemplification as it appeared on the 26 of December.

A. I have no doubt in the world.

81. You saw — on the 26 of December?

A. Yes.

82. Now, then, that certifies that this — a correct exemplification of that book as it appeared on the 26 of last December; is it? What do you say?

A. I have no doubt that it is.

83. That is, Mr. Widdicombe, a correct exemplification at the time you made this Hedrick entry?

220 A. No; because that Hedrick entry is on that.

84. Independent of these figures it was in this mutilated condition?

A. Yes, sir; it was.

85. You think at the time you made this application you examined the condition of the tract book in section 28, township 61, range 17?

A. I am satisfied that I did.

86. Now, is that knowledge derived from the reason of from the memory?

A. From reason.

87. It isn't, then, derived from your memory?

A. No, sir; I have no independent recollection of that.

88. You have no independent memory of the fact that you examined the tract book relating to the W. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of section

28, township 61, range 17, when you made this Hedrick entry, have you?

A. I just reason that I did.

89. I see on this exemplification (marked 4) the word "cancelled." Tell the court in what way that word was written in 1885, when you made the Hedrick application.

A. I have no recollection.

90. How did it appear on the 26th day of Dec., 1890?

A. Just as it appears now.

91. Did it appear in ink?

A. I don't recollect.

92. Was it in pencil?

A. I don't recollect.

221 93. Do you recollect whether it was in black ink?

A. Wouldn't testify to that.

94. Would you say it was in red ink?

A. I wouldn't testify.

95. That entry has lines running through it. Did it have these lines running through it on the 1st of Sept.?

A. I have no doubt.

96. I mean from your memory whether it had these lines running through it or not.

A. No, sir; I don't remember.

97. Will you tell the court what kind of ink this Pitt Cook entry was in?

A. I think that it was in red ink.

98. You can remember it was in red ink, but cannot remember as to these lines?

A. I cannot.

99. It was cancelled with pencil lines, was it?

A. Yes.

100. Do you remember what kind of ink the entry preceding the Pitt Cook entry was in?

A. Yes; it was a cash entry, and they are always made in black ink.

101. Speaking from your memory?

A. No.

102. Then you have no memory about the matter?

A. I am speaking simply from reason.

103. Omit your reason and testify from your memory and your memory alone.

222 By the COURT: Do you remember it as an independent fact?

A. It was black ink.

104. I want you to state from your memory whether the Van Cleve entry was there at the time you made this Hedrick entry.

A. From memory I think that it wasn't.

105. Was this Cavil M. Freeman entry at the time you made this application in this Hedrick case?

A. I guess it was; I would not say positively.

106. I am asking about your memory. What is your memory?

A. My memory certainly can't change the letter and the records.

By the COURT: He asks if you remember.

A. I don't.

107. You don't remember if the Cavil M. Freeman entry was in existence when you made the Hedrick entry?

A. I cannot remember.

108. Do you know what kind of ink the Cavil M. Freeman entry is on the book today?

A. No; I think it is in black ink.

109. How does the ink in the Cavil M. Freeman entry compare in freshness with the ink in the William Van Cleve entry?

A. I wouldn't testify.

109. I'll ask you if the ink in the Wm. M. Van Cleve entry isn't fresher and as new as that in the Freeman entry. Are they in the same ink?

A. I wouldn't pretend to say.

110. Did you at the time you made this entry examine the monthly abstract book of sales?

A. I guess I did.

223 111. Where is your exemplification?

A. Here it is.

112. Now, I'll give you these two exemplifications and see which one in your opinion stands nearest like the original. Which is nearest an exact copy?

A. (Witness examines the papers.) I think that the exemplification of the 26 of December resembles the original more than this one of Dec. 11—that is, Defendants' Ex. D resembles the original more closely than the Plaintiff's Ex. G.

113. I'll ask if you visited the defendants here, *Mr.* Wilson and Saunders, in May, 1887.

A. Yes; in company with Mr. Park.

114. Mr. Park told you that this railroad was being built through this land?

A. I saw it.

115. You searched that land office and this letter is all you found authorizing any change in that?

A. Yes, pertaining to this.

116. You made a close search for everything and that letter was all you found?

A. Yes.

117. If in '66 that alteration was made, where would that letter be in 1866?

A. Where it is now.

118. You don't find any evidence that this "Belongs to 17 R." was put there prior to the time of Reichie?

A. I can't say that I do.

224 119. This letter would go into the files—this letter of Jan. 12, 1862—and unless some one called it up it would sleep there all the days of its life, would it not?

By Mr. JOHNSON: We object.

By the COURT: Objection*ed* sustained.

120. The question is that, unless some one come and called for it, it would never have been found?

A. I don't suppose that it would.

121. What would call that letter up?

A. This notation.

122. If you hadn't gone in there and hunted this letter up, it never would have been taken out, would it?

A. I couldn't say. I think that it was the register did it, anyway.

123. Well, he done it because you moved him to do it?

A. Yes.

That's all.

The defendant- then recalled Mr. PARK in rebuttal.

Examined by Mr. GUTHRIE:

1. In your visit in January, 1887, and your examination of the books, I'll ask you if you examined the tract book for the W. ½ of the S. E. ¼ of section 28, township 61, range 17.

By Mr. JOHNSON: We object. It is redirect examination.

By the COURT: Answer it.

A. I think that I did is my impression.

2. Now, I'll hand you Ex. F, attached to McCracken's deposition, and ask you if you are familiar with that record.

A. Yes.

3. What is it?

225 A. Copy of the tract book as it appeared on the 26 of last Dec., relating to 28, 61, 17.

4. I'll get you to state if you observed, when you went there in January, 1887, what entries were made on S. 28, 17?

A. Well, sir, I don't remember positively.

5. Was the Pitt Cook entry there?

A. Yes.

6. Didn't the Pitt Cook entry call for the N. ½ of S. ½ of 28?

A. I know that the plat book showed that.

7. Do you remember what kind of ink the Pitt Cook entry was in?

A. Pale red ink.

8. The word "cancelled" that was on the edge of the margin was in what kind of writing?

A. I don't recollect.

9. How was it in December last?

A. Don't remember.

10. Do you remember the Van Cleve entry on the opposite page from the Pitt Cook entry?

A. No; I don't know as I do.

11. Was the Van Cleve entry there in 1887?

A. I don't know; can't remember. I think it was.

12. Did you examine it when you was down there in December last?

A. Yes.

13. How was the ink in the Van Cleve entry compared with the Freeman entry?

226 A. It compared in color, freshness, age, and handwriting.

14. Will you state now what was the date of the Van Cleve entry?

A. September 19, 1885.

15. And the Freeman entry was July, 1856, was it?

A. Yes, sir.

16. Did you examine the tract book when you went down there in 1887 and December last?

A. Yes.

17. I now call your attention to Ex. (G). Is that a correct exemplification?

A. Yes; as I saw it last December.

18. Do you recollect how it appeared the other time?

A. I remember that the Pitt Cook entry was written there in pale red ink; just as it is now.

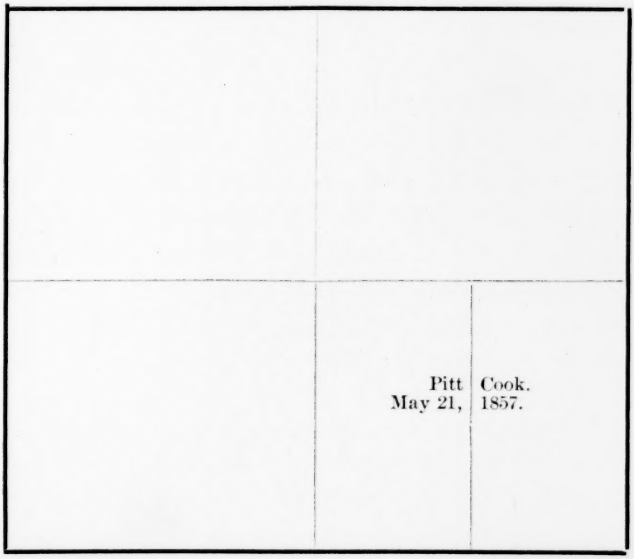
Mr. Guthrie offers and reads in evidence Defendants' Ex. (F), relating to 28, 61, 17, and also the certificate of the register.

Mr. Guthrie offers and reads in evidence Defendants' Ex. (G), being the plat book of 28, 61, 17, and also the certificate of the register.

Mr. Guthrie offers and reads in evidence the plat book of Adair county, relating to section 28, township 61, range 17, in words and figures following, to wit:

(Clerk will here copy Ex. 31.)

227 *Section* 28, *Township* 61, *Range* 17.



(Copied from the township plat book in the office of the county clerk of Adair county.)

120. The question is that, unless some one come and called for it, it would never have been found?

A. I don't suppose that it would.

121. What would call that letter up?

A. This notation.

122. If you hadn't gone in there and hunted this letter up, it never would have been taken out, would it?

A. I couldn't say. I think that it was the register did it, anyway.

123. Well, he done it because you moved him to do it?

A. Yes.

That's all.

The defendant- then recalled Mr. PARK in rebuttal.

Examined by Mr. GUTHRIE:

1. In your visit in January, 1887, and your examination of the books, I'll ask you if you examined the tract book for the W. ½ of the S. E. ¼ of section 28, township 61, range 17.

By Mr. JOHNSON: We object. It is redirect examination.

By the COURT: Answer it.

A. I think that I did is my impression.

2. Now, I'll hand you Ex. F, attached to McCracken's deposition, and ask you if you are familiar with that record.

A. Yes.

3. What is it?

225 A. Copy of the tract book as it appeared on the 26 of last Dec., relating to 28, 61, 17.

4. I'll get you to state if you observed, when you went there in January, 1887, what entries were made on S. 28, 17?

A. Well, sir, I don't remember positively.

5. Was the Pitt Cook entry there?

A. Yes.

6. Didn't the Pitt Cook entry call for the N. ½ of S. ½ of 28?

A. I know that the plat book showed that.

7. Do you remember what kind of ink the Pitt Cook entry was in?

A. Pale red ink.

8. The word "cancelled" that was on the edge of the margin was in what kind of writing?

A. I don't recollect.

9. How was it in December last?

A. Don't remember.

10. Do you remember the Van Cleve entry on the opposite page from the Pitt Cook entry?

A. No; I don't know as I do.

11. Was the Van Cleve entry there in 1887?

A. I don't know; can't remember. I think it was.

12. Did you examine it when you was down there in December last?

A. Yes.

13. How was the ink in the Van Cleve entry compared with the Freeman entry?

226 A. It compared in color, freshness, age, and handwriting.

14. Will you state now what was the date of the Van Cleve entry?

A. September 19, 1885.

15. And the Freeman entry was July, 1856, was it?

A. Yes, sir.

16. Did you examine the tract book when you went down there in 1887 and December last?

A. Yes.

17. I now call your attention to Ex. (G). Is that a correct exemplification?

A. Yes; as I saw it last December.

18. Do you recollect how it appeared the other time?

A. I remember that the Pitt Cook entry was written there in pale red ink; just as it is now.

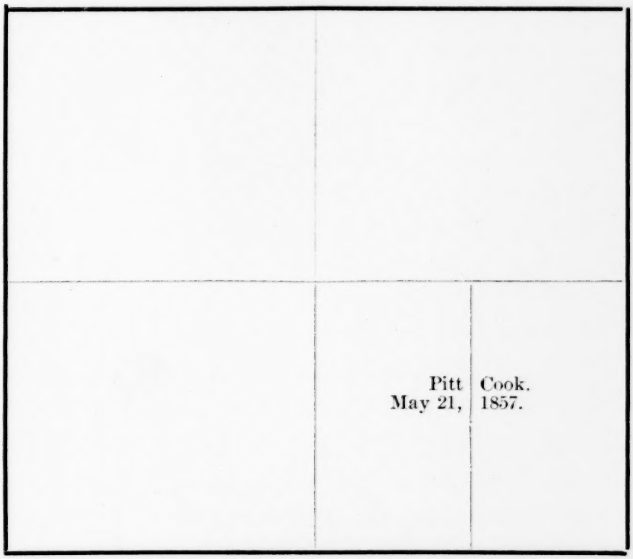
Mr. Guthrie offers and reads in evidence Defendants' Ex. (F), relating to 28, 61, 17, and also the certificate of the register.

Mr. Guthrie offers and reads in evidence Defendants' Ex. (G), being the plat book of 28, 61, 17, and also the certificate of the register.

Mr. Guthrie offers and reads in evidence the plat book of Adair county, relating to section 28, township 61, range 17, in words and figures following, to wit:

(Clerk will here copy Ex. 31.)

227 *Section* 28, *Township* 61, *Range* 17.



(Copied from the township plat book in the office of the county clerk of Adair county.)

Whereupon the plaintiff ask- the court to declare the law as follows:

(Clerk here copy plaintiff's instructions numbered 1, 2, 3, 4, 5, 6, 7.)

In the Circuit Court of Adair County, Mo., April Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
vs.
THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY *et al.*, Defendants.

The court, at the instance of plaintiff, is asked to declare the law to be as follows:

228 1.

The evidence offered by defendant to prove a mistake on the part of Cavil M. Freeman or the U. S. land officers, in issuing a patent for land located with military land warrant #8470, is insufficient to overcome the record evidence submitted by plaintiff.

(2.)

The court declares the law to be that the statute of limitations does not run against the United States Government, and if the evidence does not show that the defendant and its grantors have held the actual, adverse, open, hostile, exclusive, and continuous possession of the land in controversy for the period of ten years prior to the commencement of this suit and subsequent to the date the Government parted with its title thereto, then the statute of limitations (sec. 6774, Rev. Stat. of Mo.) does not bar plaintiff's right of recovery in this case.

(3.)

The court declares the law to be that if the land warrant held by Cavil M. Freeman and upon which he attempted to locate the land in controversy was issued by the United States Government "under the act of 1850 and amendatory act of 1855," then the plaintiff is not barred from bringing his action for the possession of said land by sec. 3219, Rev. Stat. of Mo., 1879, which provides that actions for the recovery of military bounty lands must be commenced within two years after the plaintiff or those under whom he claims was seized and posses-ed of the premises in controversy.

Said section does not apply to land located on land warrants issued under the act of 1855, and the evidence shows that
229 Freeman's land warrant #8470 was issued and based on said act.

(4.)

The court declares the law to be that the plaintiff was not required to commence his action for the recovery of the possession of the land in controversy within one year from the date his legal title

emanated from the Government (which was the date of his patent) unless it appears from the evidence that the plaintiff prior to the issuance of his patent had an equitable right or title for more than 20 years, under which he had a right of action by the statute of this State, and that the defendant and those under whom he claims had been in the possession of said land for 20 years prior to the issuance of said patent, claiming the same in fee.

(5.)

It is admitted and proven that the plaintiff has the legal title to the land in controversy, as shown by his patent from the U. S. Government, and in order to defeat said legal title the burden is upon the defendant to prove to the satisfaction of the court that it was obtained by the fraudulent acts of the plaintiff or his agent or that the land was actually entered by Calvin Freeman and pl'ff had full knowledge of the right of defendant or its grantors, and unless such proof has been made the finding of the court should be for the plaintiff, and such fraudulent act must be proved by competent evidence, and not merely conjectured or suspicioned.

(6.)

The court declares the law to be that if on the 25th day of July, 1856, one Cavil M. Freeman filed with the register of the
230 United States land office at Milan, Missouri, his written application for the location of land warrant # 8470 upon the west half of the southeast qr. of sec. 28, town. 61, range 17, in Adair county, Missouri, and that afterwards, on the 10th day of Sept., 1859, a patent issued from the Government to said Freeman therefor, and that said patent has ever since remained uncancelled and in full force, then said Freeman nor no one claiming under him can hold the land in controversy under a claim based upon said land warrant # 8470. The land laws of the United States authorized the location of military land warrant # 8470 upon one 80-acre tract of land only, and so long as this location remains unrevoked and uncancelled no other location can be made; and although it may appear from the evidence that the said Freeman sold the land in controversy, believing it was covered by his warrant, and that it has been held by his grantees ever since, yet these facts will not defeat plaintiff's legal title to said land unless the same was procured by the fraudulent acts of plaintiff or his agent, and these fraudulent acts must be proved by competent and proper evidence and not mere conjectures or suspicions.

(7.)

The court declares the law to be that although one Cavil M. Freeman may have attempted to enter the land in controversy and may have believed that he had located his land warrant # 8470 thereon and may have afterwards in good faith sold the same to other parties through whom the defendants claim title, yet these facts alone would not give the defendant or its grantors an equitable

right or title to said land under which a right of action could be maintained under the statutes of this State.

231 In order to create the equitable right or title to said land as contemplated by the statute of Missouri (sec. 6771, Rev. Stat. 1889) there must have been, in addition to the attempt of said Freeman to enter said land, an actual possession by him and his grantees for the period of twenty years. The mere attempt to purchase land, either from the Government or an individual, gives the the party making such attempt no equitable right or title.

And there is no evidence in this case that the defendant or its grantors have held the possession of said land for 20 years.

The court gave instructions numbered 2, 3, 4, & 6 and refused to give instructions numbered 1, 5, and 7 as asked by plaintiff; to which action of the court in refusing to give instructions numbered 1, 5, and 7 the plaintiff then and there at the time objected and excepted.

The court, of its own motion, gave the following instruction (clerk here copy instruction No. 5 as amended or changed by the court) (instruction No. 5 as modified not with papers); to which action of the court in giving said instruction the plaintiff at the time objected and excepted.

The court, at the instance of defendant, declared the law as follows (clerk here copy defendant's instructions):

Instructions.

1. The court declares the law to be that if, on the 25th of July, 1856, Cavil M. Freeman, assignee of land warrant No. 8470, act of March 3d, 1855, applied to the land office at Milan to enter with said warrant the west half of the southeast of 28, 61, 14, and delivered his warrant to the register or receiver of the land office, and

232 thereupon the register, knowing his intention to enter said land, issued to him a certificate of entry, the exemplification of which has been read in evidence, and thereupon entered in the tract and plat books the proper notations, indicating that said Freeman had entered said land, and that said Freeman thereupon took said certificate of entry and thereafter used and treated said land as his own under said entry, it being the intention of said Freeman at the time of said entry to enter said land, and the said register, knowing such intention of said Freeman, intended that he should enter said land, then said Freeman become by said entry seized and possessed of an equitable title and estate in said land, and as such was entitled in due course of time to a patent from the General Government, this too, notwithstanding the court may further believe and find from the evidence that in making and writing out the application said land was by mistake described as lying in range 17 instead of range 14, as said Freeman and the register intended it should be.

3. The court declares the law to be that if the court should find under instruction 1 that the intention of Freeman was to enter the land in controversy, then Freeman became seized of an equitable

estate in said land, and his right cannot be defeated by the subsequent entry of the plaintiff and his patent for the said land, provided at the time of said entry and the payment of the entry money the plaintiff had knowledge or notice of the said equitable estate of Freeman in said premises; to which action of the court the plaintiff at the time objected and excepted.

(Here copy military bounty land warrant.) Ex. a.

The defendant also offered in evidence a duly certified copy of military bounty land warrant referred to in the papers and
233 evidence of this case.

Said military bounty land warrant is in words and figures as follows:

80 acres. UNITED STATES OF AMERICA. 80 acres.

Bounty land.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE COMMISSIONER OF PENSIONS.

It is hereby certified that, under the act of March 3rd, 1855, entitled "An act in addition to certain acts granting bounty land to certain officers in the military service of the United States," Thomas Threldkeld, private, Captain Redding's company Kentucky militia, Mar., 1812, is entitled to locate eighty acres at any land office of the United States in one body and in conformity to the legal subdivisions of the public lands "subject to sale, either the minimum or lower graduated prices."

Given under my hand and the seal of the department this 11th day of October, 1855.

No. 8470.

S. COLE,
Acting Commissioner.

On Monday, the 4th day of May, 1891, the court found for the defendant—

And on the 6th day of May, 1891, and within four days after judgment by the court, the plaintiff filed his motion for a new trial as follows:

(Clerk here insert same.)

234 *Motion for New Trial.*

STATE OF MISSOURI, }
County of Adair. }

Adair Circuit Court, September Term, 1891.

ROBERT G. HEDRICK, Plaintiffs, }
vs. }
ATCHISON, TOPEKA — SANTA FE R. R. CO. *et al.*, Defendants. }

Robert G. Hedrick move- the court to set aside the verdicts herein and grant a new trial herein—

1. Because the court admitted any testimony offered by defendants.

2. Because the court admitted illegal and improper testimony offered by defendants.

3. Because the court excluded legal and proper testimony offered by pl'ff.

4. Because the court, of its own motion, gave illegal and improper instructions and illegal and improper declarations of law.

5. Because the court, at the instance of defendants, gave improper instructions and illegal and improper declarations of law.

6. Because the court refused to give proper and legal instructions and proper and legal declarations of law asked by pl'ff.

7. Because the court erred in the admission and rejection of testimony and in the giving and refusal of instructions and declarations of law, all against the objections of plaintiff at the time.

8. Because the verdicts are against the law and evidence and against the law under the evidence.

235 9. Because the verdicts should have been against the def't-instead of against the pl'ff.

10. Because the court overruled the demurrer to this evidence.

ROBERT G. HEDRICK,
By his att'ys, A. C. WIDDECOMBE,
JOHNSON AND F. M. HARRINGTON.

Which said *the* motion the court, on the 6th day of May, 1891, overruled; to which ruling and order of the court the plaintiff then and there excepted at the time.

Being the last day of the term, the plaintiff was granted an order by the court allowing him thirty days within which to present his bill of exceptions.

He therefore prays the court to allow and sign this bill of exceptions and that the same may be signed and sealed and made a part of the record, which is done this 25th day of June, A. D. 1891.

ANDREW ELLISON, [SEAL.]
Judge of the Adair Circuit Court.

(Endorsed:) State of Missouri, county of Adair, circuit clerk'-office. Filed June 25, 1891. A. P. Hibbs, clerk, by W. J. Asblock, deputy.

In the Circuit Court of Adair County, April Term, 1891.

ROBERT G. HEDRICK, Plaintiff,
vs.
236 THE ATCHISON, TOPEKA & SANTA FE R. R. Co. *et al.*, Defendants.

The time heretofore granted in the above-entitled cause within which he had to file his bill of exceptions is hereby extended for

thirty (30) days, in order that defendants may have further time to examine plaintiff's bill of exceptions.

June 13th, 1891.

ANDREW ELLISON,
Judge of the Circuit Court of Adair Co.

Motion in Arrest of Judgment.

STATE OF MISSOURI, } ss:
County of Adair, }

In the Circuit Court of Adair County, State of Missouri.

ROBERT G. HEDRICK, Plaintiff,
against
ATCHISON, TOPEKA — SANTA FE R. R. Co. *et al.*, Defendant-.

Now come- plaintiff and moves the court to arrest the judgment in this cause for the reasons—

1st. That upon the records said judgment is erroneous.

3d. That the answer does not state facts sufficient to constitute a defense to plaintiff's cause of action.

4th. That the verdict of the jury is not responsive to the issues made by the pleadings.

5th. That the jury have not found upon all the issues made by the pleadings.

6th. That the court erred in overruling pl'ff's motion for a new trial.

237 A. C. WIDDECOMBE,
JOHNSON & HARRINGTON,
Attorney- for Plaintiff.

In the Adair Circuit Court, April Term, 1891.

ROBERT G. HEDRICK, Pl'ff,
vs.
ATCHISON, TOPEKA — SANTA FE R. R. Co. *et al.*, Def't-.

Now comes the plaintiff, Rob't G. Hedrick, by his attorney and agent, A. C. Widdecombe, in the above-entitled cause, — being sworn, upon his oath says that the appeal prayed for by him is not made for vexation or delay, but because he considers the plaintiff aggrieved, and the plaintiff himself is aggrieved by the judgment and decision of the court.

A. C. WIDDECOMBE.

Subscribed and sworn to before me this the 6th day April, 1891.
A. P. HIBBS, *Cir. Cl'k.*

238 And afterwards, to wit, on the 27th day of February, 1894, the further following proceedings were had in said cause, viz:

ROBERT G. HEDRICK, Appellant, *vs.* THE ATCHISON, TOPEKA AND SANTA FE Railroad Company, JAMES G. WILSON, and JOHN G. SAUNDERS, Respondents.	Appeal from Adair County Circuit Court.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid in form aforesaid by the said Adair county circuit court rendered be in all things affirmed and stand in full force and effect, and that the said respondents recover against the said appellant their costs and charges herein expended and have therefor execution. (Opinion filed.)

Which said opinion is in words and figures as follows, to wit:

239 In the Supreme Court of Missouri, October Term, 1893, Division No. 2.

ROBERT G. HEDRICK, Appellant,
vs.
THE ATCHISON, TOPEKA & SANTA FE R. R. Co., JAMES WILSON, and JNO. G. SAUNDERS, Respondents.

Appeal from Adair circuit court. Hon. Andrew Ellison, judge.

Statement.

Ejectment brought September, 1890, for a strip of land which forms the right of way of the defendant railroad company through the west half of the southeast qr. of sec. 28, T. 61, R. 14, in Adair county.

The appeal was taken under the provisions of section 2253, R. S. 1889, only a certified copy of the decree made in this cause, &c., being sent up to this court, which decree was entered in favor of the defendant company and the other defendants, and plaintiff has appealed therefrom. Plaintiff relies on a patent from the United States for the 80 which includes the litigated land, which patent is dated July 20th, 1886.

The answer of the defendant company consisted of a general denial, admission of possession, and the following: "And defendant further alleges that by the laws and statutes in such cases made and provided it long prior to the bringing of plaintiff's action acquired good right and title to said premises and the possession thereof.

And for another and further defense defendant says plaintiff and those under whom he claims have never been in possession of said premises or any part thereof and have never paid any taxes
240 thereon, but defendant and its grantors have been in actual, open, notorious, and adverse possession of said premises for more than thirty (30) years next before the filing of plaintiff's petition in this cause, holding and claiming said premises and every

part thereof against all persons whomsoever, paying the taxes thereon in good faith and making lasting and valuable improvements thereon.

And for another and further defense to plaintiff's petition defendant says that on July 25, 1856, one Calvin M. Freeman duly and legally entered the west half of the southeast quarter of section twenty-eight, township sixty-one, range fourteen (which said tract includes the land described in plaintiff's petition), by laying and locating thereon, under the military bounty land act of March 3, 1855, military bounty land warrant 8470, and thereupon received of the register of the land office at Milan, Missouri, at which office the said land was subject to entry, a certificate of such entry.

That by accident, mistake, or oversight the application of said Freeman failed to describe the said land and placed it in some other range, but that it was the intention of said Freeman to enter said west half hereinbefore described, as it was also the intention of the said register and receiver that he should enter said land and locate said warrant upon said land, and thereupon J. Seaman, then the register of said land office, issued to him said certificate, in which said land was properly described as the west half of the southeast quarter of section twenty-eight, township sixty-one, of range fourteen, and that proper notations of such entry were made and entered upon the tract and plat books of said office, showing
241 the facts of said location and entry; that said Freeman thereupon accepted said certificate from said register and delivered said land warrant therefor and entered into the possession of the land so entered, to wit, the said west half of the southeast quarter of section twenty-eight, township sixty-one, range fourteen, and so remained in possession thereof and paid taxes thereon until the 29th day of February, 1860, when he by general warranty deed sold and conveyed said premises to one William A. Lane, who entered into the possession thereof and paid the taxes thereon until the 15th day of April, 1875, when he by general warranty deed sold and conveyed the same to one William E. Parcells, who thereupon entered into possession and paid the taxes thereon; that by means of regular mesne conveyances the right and title of Parcells was sold and conveyed to John G. Sanders and James G. Wilson and all of said grantees of said Sanders and said Wilson entered into actual possession of said premises and improved the same in good faith and paid the taxes thereon until the first of January, 1887, and said Wilson and Sanders by their several conveyances sold the premises described in plaintiff's petition to the Chicago, Santa Fe & California Railway Company of Iowa, which thereupon entered into a possession thereof and commenced in good faith the construction of its line of railroad over said premises at great expense; that on the 7th day of March, 1887, said Sanders and Wilson, in pursuance of their several contracts, conveyed said premises by their several warranty deeds to said railway company, under which company defendant by regular conveyances claims to own said premises and the right to the possession thereon, and has in good faith made lasting, permanent, and very valuable improvements thereon.

That said Calvin M. Freeman nor his assigns have ever at
242 any time made any claim upon the land which by mistake was described in the application of said Freeman to locate said land warrant, nor has he nor they at any time ever been in possession of said land or paid any taxes thereon, but both he and they have at all times held and claimed the land herein in controversy as the land entered and located by the said Freeman at said time and place.

That on the 20th day of July, 1886, the plaintiff, with full knowledge and notice of the location of said land warrant and the entry of said land by said Cavil M. Freeman and the fact of the possession of the said Freeman and his grantees, and also the notations of said tract and plat books in the land office, for the purpose of cheating and defrauding the then owners of said land and their grantors did fraudulently and wilfully cause the notations and entries of the said tract and plat books to be changed and altered and did fraudulently enter said land and caused to be issued to himself therefor a patent thereon from the General Government with the view of cheating and defrauding the then owners of said land and their grantors and to secure the same, with the valuable improvements thereon; that afterwards, on the 7th day of January, 1887, he filed said patent for record in the office of the recorder of deeds in Adair county, Missouri, and the same was duly recorded in Book 17, at page 459, of the records of said office.

The defendant is informed and believes that one A. C. Widdecombe, who a long time has been a practising attorney before the land office at Boonville, Missouri, in which office the records, books, and papers of the former office at Milan, Missouri, were then and are now kept, and who is the son-in-law of the plaintiff, was the plaintiff's agent and attorney and conducted and transacted
243 the business for plaintiff and secured said patent to be so as aforesaid fraudulently and illegally issued; and this defendant avers that said Widdecombe at the time of making said entry and securing said patent for plaintiff and long prior thereto had full knowledge of all the facts and circumstances connected with the entry of said Freeman, and also the knowledge that said land was occupied and owned by the grantees of said Freeman; and defendant is also informed and believes that while said land is entered and patented in plaintiff's name that the said Widdecombe is the real beneficiary of said transaction, and that he has large, if not the sole, pecuniary interest in said land and is in fact and in truth the real party plaintiff in interest in this action.

Defendant avers that it and its grantors have by reason of the premises acquired and become possessed of and in equity and good conscience are entitled to all the equitable right and title of said premises and every part thereof, and that it would be wholly inequitable and unjust to allow plaintiff to take said premises from them, and that in equity plaintiff is and ought to be held as a mere trustee of the legal title for the use and benefit of defendant. Wherefore defendant prays that the plaintiff be declared a trustee for the defendant, and that whatever title he may have, if any, by reason

of the said entry and patent be divested out of the plaintiff and vested in this defendant, and for all other and proper relief, orders, and decrees that should in equity and good conscience be given, that are reasonable and right, and for general relief."

The defendants Saunders and Wilson, on their own application, were made parties defendant and filed an answer to plaintiff's petition similar in substance and effect to that filed by the
244 defendant company. Plaintiff filed a motion to strike out a portion of the answer of Saunders and Wilson, which, it seems, was denied, because on the same day—April 28th, 1891—that this motion was filed the plaintiff filed a replication to the answer of said Saunders and Wilson. The answer of the defendant company as found in the abstract of defendants has been carefully compared with the original, and we have also read the original answer of Wilson and Saunders as well as the motion by plaintiff to strike out and his replication to said answer. We sent for the original bill of exceptions and papers in this case because of the following statement made in a supplemental brief by plaintiff's attorneys, A. C. Widdecombe and others, to wit: "The 'additions, alterations, corrections, exceptions, and suggestions' offered as an additional abstract by respondent are not warranted by the record.

1. The equitable count in defendant's answer purporting to be set out in full by respondent is not verified by the record.

2. No separate answer of defendants Wilson and Saunders, neither in matter nor substance, was filed by either.

They were made parties by their own motion and leave given to plead within thirty days. No further mention appears of said parties in the record, and no pleadings were filed by either of them."

From the facts already set forth the statement just copied cannot be true, nor can such statement be deemed the result of a mere mistake.

The decree in this cause, as before stated, was entered for the defendant company and also for the other defendants for costs. In the decree findings were made on all the prominent issues,
245 to wit, that Calvin M. Freeman (under whom the defendant company claims through mesne conveyances) at the district land office at Milan, Missouri, located military bounty land warrant No. 8470, act of Congress March 3rd, 1855, upon the west half of the southeast qr. of section 28, town. 61, R. 14 west, which includes the land in question, and thereupon received a certificate of entry for said west half, &c., from the register of said land office, which entry was duly and properly posted on the books and records of said land office, by proper notation and entries in the tract book, plat book, and monthly abstract book, but by mistake said land was described in the application of Freeman as being in range 17 instead of range 14; that Freeman sold and conveyed the land he had thus bought, and he and his grantees have ever since his entry of the land paid taxes thereon and exercised acts of ownership over the same; and that since April, 1875, said *said* grantees have been in actual and continuous possession of said land, making lasting and valuable improvements, viz., fencing, dwellings, and barns;

that the plat book in the office of the county clerk of Adair county, certified by the register of the land office in 1866, shows said west half in range 14 had been entered and located by said Freeman, and the books in said land office continued to show said entry of Freeman until some time after 1874, when first additions and alterations began to be made; that said Freeman intended to enter and did enter said west half in range 14, and the land officers in the land office at Milan, Mo., knew said intention of said Freeman, and that he intended to enter said tract, and they intended him to enter said tract, whereby he became and was vested with the equitable right to said land and to a patent therefor from the Govern-
246 ment; that in 1885, while defendants Saunders and Wilson were in the actual occupation of said land, plaintiff, taking advantage of the mistake made in said application by his agent, A. C. Widdecome, who was also his son-in-law and an expert lawyer, who had full knowledge of the original entries and notations in said books and records of the land office, as well as of the additions, alterations, erasures, and defacements of said books and records then and now existing, made application for said tract of land, and did thereafter, on the 20th of July, 1886, secure a patent for said land.

That plaintiff is not a purchaser in good faith, but is chargeable with full knowledge of all the rights and equities of the defendants therein, and holds the title evidenced by the patent as trustee for the defendant railroad company, &c. The decree then proceeds to divest the title out of plaintiff and to vest it in the defendant company, &c. Other facts will be stated as hereafter necessary.

Opinion.

There was ample evidence to support the decree obtained in the court below. Although the action as begun was ejectment, yet the answers setting up equitable defenses converted the whole proceeding into an equitable one. This, of course, does away with any necessity for examining the declarations of law asked.

As will have been perceived, the controversy hinges on the number of the range—whether 14 or 17. The first paper offered on behalf of defendants was the following, to wit, a certificate of location and entry by Cavil M. Freeman:

"Military bounty land act of March 3, 1855.

MILAN, MO., REGISTER'S OFFICE, *July* 25, 1856.

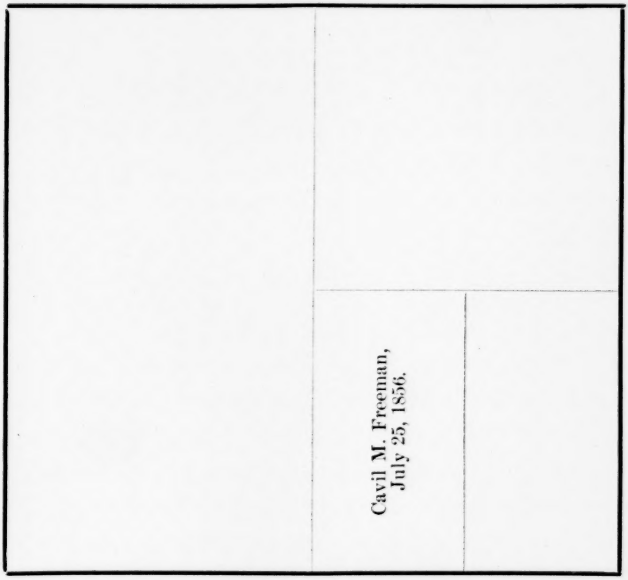
Military land warrant No. 8470, in the name of Thomas
247 Huelkeld, has this day been located by Cavil M. Freeman upon the W. ½ S. E. ¼ of section 28, in township 61, of range 14, subject to any pre-emption claim which may be filed for said land within forty days from this date.

Conten-s of tract located, 80 acres.

J. SEAMAN, *Register.*"

They next introduced the plat book from the office of the clerk of the county court of Adair county, certified by the register of the land office July 16, 1866, as follows:

Section 28, *Township* 61, *Range* 17.



(Copied from the township plat book in the office of the county clerk, Adair county.)

Then follow mesne conveyances, consisting of warranty deeds, by which the land in question was conveyed to the defendant company and to its immediate grantors.

They also introduced in evidence Exhibits "B," "F," and "D."

Exhibit B.

Township 61 north, range No. 14 west, district of Chariton, Mo.

Description of tract.				Contents.		Rate per acre.		Purchase money.		Name of purchaser.	Date of sale.	Number of receipt and certificate of purchase.	To whom patented	Date of patent.	Where recorded.	
Part of section.	Section.	Township.	Range.	Acres.	Tenths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
†640. N. ½ N. E. ¼	28	61 N.	14 W	80	00	....	75	60	00	John Glasgow	1855, Aug't 27	6326	†x			
S. E. N. E. & E. ½ S. E.	"	"	"	120	00	.....	75	90	00	Hugh Chapman	1855, Oct. 2	7013	†x			
S. W. N. E.	"	"	"	40	00	1	25	50	00	John Glasgow	1853, Dec. 11	8268	†x			
E. ½ N. W. ¼ & N. W. ¼ N. W.; see sec. 20.	.....	.....	.....	120												
S. W. ¼ N. W. qr.	"	"	"	40	00	1	25	50	00	William B. Morrison	1857, September 26th	14060				
†* W. ½ S. E. ¼	"	"	"	80	00	1	25	100	00	Robert G. Hedrick	Sept. 1, 1885.	42621				
W. ½ †* S. E. † (Error should be in R. 17;) (see Com. letter Feb'y 15, 1887.)				80	00	.....	.....	.....	.....	Cavil M. Freeman, ass. of Thomas Huelkeld.	1856, July 25.	Military land warrant No. 8470, act of 3rd March, 1855. Belongs to R. 17.				
E. ½ S. W. ¼ & S. W. ¼ S. W. ¼; see sec. 20.	....	.....	.....	120												
E. ½ S. E. ¼, 29, & N. W. ¼ S. W. ¼.	"	"	"	120	00	1	25	150	00	Henry Cem	1841, February 24	22827	†See 28, 61, 15.			
N. E. ¼ S. E. ¼, 29, & N. W. ¼ S. W. ¼.	"	"	"	80	00	.....	.....	7	.....	John W. Link	October 29th, 1870	8106	H. act May 20, '62.			
N. E. ¼ S. E. ¼, 29, & N. W. ¼ S. W. ¼.	"	"	"	80	00	1	25	100	00	Jno. W. Link	May 30, 1871	41487	Commuted hd. No. 8106.	Commuted; see cash receipt 41487.		

† Written in pencil.

U. S. Land Office, Boonville, Mo., *Dec.* 26, 1890.

I, Wm. McCracken, register of the U. S. land office at Boonville, Mo., do hereby certify that the above and foregoing is a true and correct exhibit and copy of sec. 28, twp 61, of range 14 W., as the same appears on the tract book on file in this office. On the line where the W. ½ S. E. ¼ appears, marked * and noted in red ink, viz., (Error should be in R. 17), there appears to have been an erasure where the name "Cavil M. Freeman, ass. of Thomas Huelkeld," appears; also on the same line an erasure appears at the word "military," and the words Cavil M. Freeman, ass. of Thomas Huelkeld, written in; also the word "military" is written in at the place of the last-named erasure.

And I further certify that this office is not provided with a seal.

WM. McCRACKEN, *Register.*

EXHIBIT F.

Township 61 north, range No. 17 west, district of Chariton, Mo.

Description of tract.				Contents.		Rate per acre.		Purchase money.		Name of purchaser.	Date of sale.	Number of receipt and certificate of purchase.	To whom patented.	Date of patent.	Where recorded.	
Part of section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
* * *	*	*	*	*	*	*	*	*	*	* * *	* *	*	* * *	* * *		
W. ½ S. E. ¼	28	61 N.	17 W.	80	00	Cav	il M	Fr	eem	an, assgn. of Thos. Huelkeld	July 25, 1856	Milita	y land warrant 8479	, Oct. 18 5.		
†Cancelled; see [S. E. ¼]†	"	"	"	[160	00	Pitt	Co	oke	, as	s]† James Long	1857, [May 21st	M. L. w	arrant No. 7709],† a	ct 3rd March, 1855.		
Letter, Jan. 12, 1861.																
E. ½ S. E. ¼	"	"	"	80	00	1	25	100	00	Wm. M. Vancleve	Sept. 19, 1885	42624				

[† Words and figures enclosed in brackets erased in copy.]

U. S. LAND OFFICE, BOONVILLE, MO., *Dec.* 26, 1890.

I, Wm. McCracken, register of the United States land office at Boonville, Mo., do hereby certify that the above and foregoing abstract of the W. ½ S. E. ¼, sec. 28, twp. 61, of range 17 west, is a true copy of the tract book on file in this office; also abstract of S. E. ¼, sec. 28, twp. 61, R. 17, to Pitt Cook, ass. James Long; also E. ½ S. E. ¼, sec. 28, twp. 61, R. 17, to Wm M. Vancleve, which is a true and correct copy of the tract book on file in this office.

And I further certify that this office is not provided with a seal.

WM. McCRACKEN, *Register.*

EXHIBIT D.

(Act 3rd March, 1855.)

Monthly abstract of locations on public lands "subject to private entry," made for the month ending July 31st, 1856, at the land office at Milan, Mo., on military land warrant certificates issued pursuant to the 1st section of the act of Congress entitled "An act in addition to certain acts granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States," approved March 3, 1855.

Register's and receiver's No.*	Number of the warrant.	Warrant certificate.		In whose favor.	Tract located.				Date of location.	By whom located.	Remarks.
		Date.	No. of acres.		Quarter section or part of quarter section.	Township.	Range.	Contents.			
* *	* *	* *	*	* * *	* * *	*	*	*	* *	* * *	* * *
1252½	8470	Oct. 11th, 1855	80	Thomas Huelkeld...	W. ½ S. E.....	61	17	80	July 25, 1856	Cavil M. Freeman...	This was omitted on the register; hence the half No.

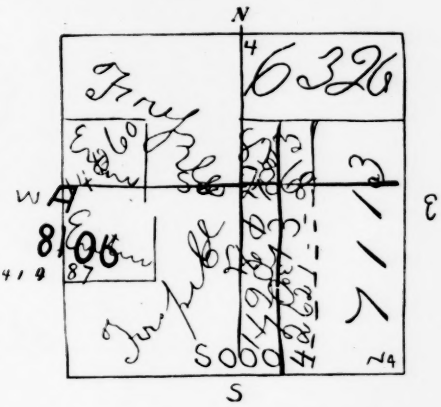
LAND OFFICE AT BOONVILLE, MO., *Dec.* 26, 1890.

I, Wm. McCracken, register of the United States land office at Boonville, Mo., do hereby certify that the foregoing is a true copy of the abstract of warrant locations, act of March 3, 1855, as the same appears of record in this office. The figures 17, describing the range, shows an erasure and the figures 17 inserted.

WM. McCRACKEN, *Register.*

248 They also introduced in evidence Exhibit C, attached to McCracken's deposition, as follows:

EXHIBIT C.



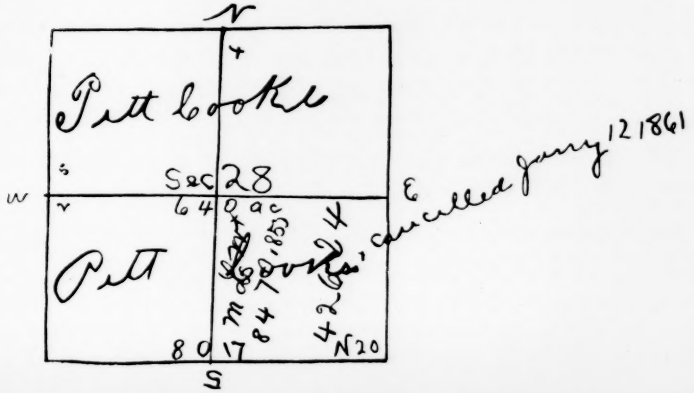
BOONVILLE, Mo., *Dec.* 26, 1890.

I, Wm. McCracken, register of the United States land office at Boonville, Mo., do hereby certify that the diagram hereto attached is a true copy of section 28, twp. 61, range 14 W., as the same appears on the plat on file in this office, as near as I am able to trace the same, and that there are some interlineations and figures in the W. ½ S. E. ¼ and the S. W. ¼ N. E. ¼ of said section 28 which are unintelligible or illegible.

WM. McCRACKEN, *Register.*

Then they introduced in evidence, relating to the plat book of 28, 61, 17, and also the certificate of the register thereto, as follows:

EXHIBIT G.



U. S. LAND OFFICE,
BOONVILLE, Mo., *Dec.* 26, 1890.

I, Wm. McCracken, register of the U. S. land office, Boonville, Mo., do hereby certify that the above diagram is a true tracing and copy of sec. 28, twp. 61, R. 17, as the same appears on the plat book on file in this office.

And I further certify that this office is not provided with a seal.

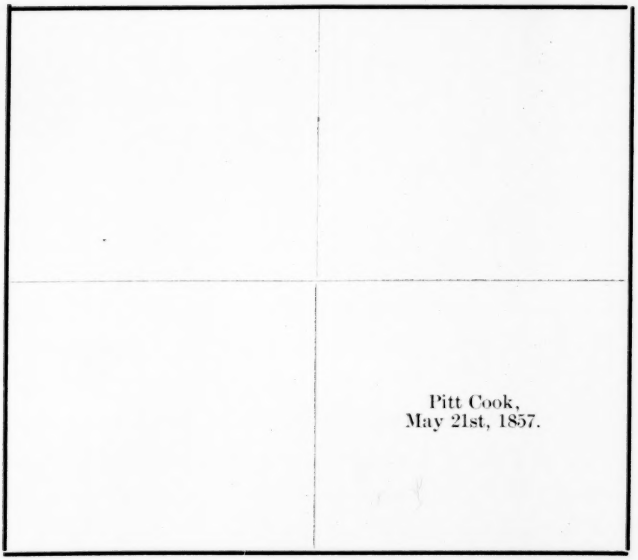
WM. McCRACKEN, *Register.*

249 Next in evidence they introduced "Exhibit 31:"

"Mr. Guthrie offers and reads in evidence the plat book of Adair county relating to section 28, township 61, range 17, in words and figures following, to wit:"

EXHIBIT 31.

Section 28, *Township* 31, *Range* 17.



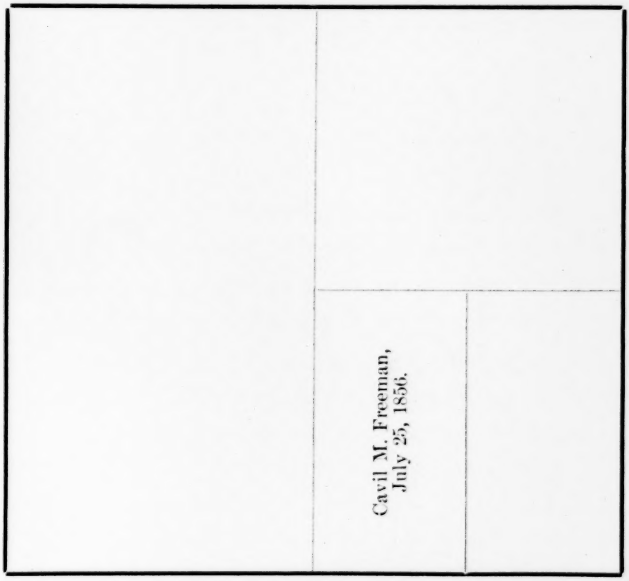
(Copied from the township plat book in the office of the county clerk of Adair county.)

This plat was certified July 16, 1866, as was the one heretofore mentioned.

The exhibit last copied is that taken from defendants' abstract, and it conforms exactly to the original bill of exceptions now before us. Plaintiff's abstract has and calls for no such exhibit as 31, and on pp. 51 and 52 of his abstract is this:

" Mr. Guthrie offered and read in evidence the plat book of Adair county relating to section 28, township 61, range 17, in words and figures following, to wit : "

Section 28, *Township* 61, *Range* 14.



(Copied from the township plat book in the office of the county clerk, Adair county.)

250 A similar departure from the original bill of exceptions occurs in the alleged " transcript of the record," which was filed in this court by plaintiff's counsel after the term began, without any request on our part and after the cause had already been brought up on a short transcript, as aforesaid. The alleged transcript, indeed, in its index calls for exhibits ranging from 1 to 37, but No. 31 is omitted as well in the index as in the body of the transcript, and in its place is substituted " Exhibit 30," which was the first paper offered by defendants, as before stated, and had already been copied at page 18 of the alleged transcript as " Exhibit 30," but was made to do duty again as " Exhibit 30 " on page 88 of the same document, where range 14 was changed to 17 and where instead of Pitt Cook's name, under date of May 21st, 1857, covering the whole of the southeast quarter of section 28, is found that of Cavill M. Freeman, under date July 25th, 1856, covering only the W. ½ of S. E. qr. of sect. 28. With these slight discrepancies, however, plaintiff has made a very excellent copy of the original " Exhibit 31," though he does not appear to be acquainted with it by that name.

Other exhibits called for have not been copied in the original bill of exceptions, nor in plaintiff's abstract.

Evidence was also adduced showing a thorough familiarity of plaintiff's attorney Widdecombe for 25 years with business before the land office, in the disposal of the public lands, as well as a familiarity with the records of said office; this much he admits himself. Among other questions asked him was the following:

"Q. State if the following entry appeared on the record at the time you made the application for Mr. Hedrick: 'West half southeast quarter, section 28, township 61, range 14, 80 acres; Cavil M. Freeman, assignee of Thomas Huelkeld; 1856, July 25; mili-
251 tary land warrant No. 8470; act 3rd March, 1855.'

A. I have no doubt that it did, with the additional notation thereon, 'Belongs to R. 17,' which means range 17."

In January, 1887, after the filing of the patent for record by Widdecombe, defendants Wilson and Saunders sent their attorney, Mr. Joseph Park, to Boonville to investigate the matter. He examined the tract book in the land office and found this notation: "W. ½ S. E. ¼ of section 28, township 61, range 14, 80 acres; Cavil M. Freeman, assignee of Thomas Huelkeld; July 25, 1856; military land warrant No. 8470, act March 3, 1855. Now, that was the numbers of the record at that time without any erasure or any interlineations."

The notation on the plat book on the W. ½ of S. E. qr., sec. 28, t'p 61, R. 14, was "Cavil M. Freeman, July 25, 1856." Park is corroborated as to the condition of the notations on the books in the land office in January, 1887, by the letter from the Assistant Commissioner of the General Land Office, at Washington, of February 15, 1887, and addressed to the register and receiver at Boonville:

"GENTLEMEN: I am in receipt of your letter of January 27th, 1887, stating that your records show that the west half of the southeast quarter of section 28, township 61, range 14, was located by Cavil M. Freeman July 25, 1856, per warrant No. 8470, act 1855, and that you were 'shown an abstract of title from the records of Adair county, Mo., a regular chain from the said Freeman to the present occupant of the land, Mr. James H. Sanders.'"

Three years later, December, 1890, Mr. Park returned to Boonville to take the depositions for use in this case. He found the entries relating to the tract in question as follows on the tract book: "On December 26, 1890, there appeared on this line this star in
pencil, and marked in red ink 'Belongs to R. 17,' and where
252 the words 'Cavil M. Freeman' now appear is a plain erasure and mutilation, and then in darker and much later ink the name of Cavil M. Freeman rewritten in the same place, and where the word 'military' is written is a plain erasure and a total destruction of whatever had been written there, and the word 'military' is written in black ink at a much later date and, from its appearance, in a different handwriting from the name and the other writing that was not erased."

The star on the Freeman entry, made in pencil, seemed to be

referred to from the Hedrick entry, which had been posted a line or two above and had a similar pencil star to it. The Freeman entry was also at that time marked by an index hand in pencil, with the finger pointing to the Hedrick entry above. At the right-hand end of the line on which the Freeman entry was noted was added, in red ink, "Belongs to R. 17." This red-ink notation was in the handwriting of Gustave Reiche, whose whereabouts prior to and at the trial defendants were not able to ascertain.

It also appears that after the receipt of the letter of February 15, 1887, *form* the General Land Office, the then register, Mr. Wright, had written on the right-hand end of the line of the tract book on which the Hedrick entry was posted, in red ink, the words, "Correct; see Com. letter February 15, 1887," and had inserted on the line on which the Freeman entry was noted, and just after "W. ½ S. E. ¼," in red ink, these words, figures, and characters: "Error; should be in R. 17; see Com. letter February 15, 1887."

As to the plat book, in December, 1890, Mr. Park found the following: "The witness' attention was called to Exhibit 'C' attached to McCracken'- deposition, which he stated he compared
253 with the original the best he could, and saw it made — traced. The condition as shown is correct so far as we could make the marks, but there *was* so many erasures and remarkings that nothing but a glass could show it all. In January, 1887, the name of Cavil M. Freeman, July 25, 1857, appeared on the W. ½ of S. E. ¼ of section 28, township 61, range 14, on the plat book. On December 26, 1890, the W. ½ of S. E. ¼ of section 28, township 61, range 14, didn't appear to have the name of Cavil M. Freeman so it could be read at all. There appeared to have been erasures and mutilations, so that this plat is as correct a tracing as the register could make it, but it scarcely reads anything at the present time."

The monthly abstract of location under military land warrants (Exhibit D) was examined by Mr. Park in December, 1890. Witness identified Exhibit D attached to McCracken's deposition and stated he had seen the book from which it was made. "I cannot testify whether the figure 7 in 17 under the range column is as when copied, but I can tell you what appeared there—just as plain an erasure of the figure 4 where the figure 7 is written as anything can be."

The records as to section 28, township 61, range 17, and the testimony in relation thereto are briefly as follows:

"Exhibit F, copied from the tract book, shows W. ½ S. E. qr.; Cavil M. Freeman, assignee, etc.; July 25, 1856; military land warrant 8470, act 1855." Then follows in red ink: "S. E. ¼ * * * Pit Cook, ass. James Long, 1857, May 21," etc. The notation now has a line run through a portion of it with a pencil, and just at the left and running down under the "S. E. ¼" there is penciled these words: "Cancelled. See letter June 12, 1861."

Next below the Cook entry came: "E. ½ S. E. ¼ * * * 80.00, 1.25, 100.00. Wm. M. Vancleve, Sept. 19, 1885," etc.

254 Mr. Park does not remember positively the condition of the tract book in 1887, save that it showed that Cook had

entered the north half and the south half, and the notation was in pale red ink.

"I examined the Vancleve entry in December last, and it compared in color, freshness, age, and handwriting with the Freeman entry."

Hoge, the receiver of the Boonville land office, testifies that the Vancleve and Freeman entries are in the same handwriting—that is, as far as the entries go. I think the entries immediately preceding and succeeding the entry of Vancleve and the entry of Cavil M. Freeman are in the same handwriting and in pale red ink. The entries of Vancleve and Cavil M. Freeman are in black ink.

Evidence was also introduced on behalf of defendants showing actual possession of the premises by them or those under whom they claimed in 1875 and continuously maintained ever since; that taxes on said land have been paid ever since, and that Freeman, up to the time he conveyed the land in 1860 by general warranty deed, had claimed the land now in controversy.

As will have been noticed, this cause in all its essential features and predominant characteristics is the counterpart of Hedrick *v.* Beeler, 110 Mo., 91, 19 S. W. Rep., 492, heard before the same circuit judge as this cause, and with a like result as in the present instance. In Beeler's case there were alterations, mutilations, erasures, etc., of the record, and the name of A. C. Widdecombe appears as an assistant to the same plaintiff in procuring his title in that case; so also in this. We have had several cases in this court of contests over land, and in each of them, where that name appeared, there
255 also invariably followed in its wake, as coincidences, erasures, alterations, and mutilations of the record. Hedrick *v.* Beeler, *supra;* Widdecombe *v.* Childers, 84 Mo., 382; S. C., 124 U. S., 400; Widdecombe *v.* Mercer, 72 Mo., 588; Hedrick *v.* Stotil, 105 Mo., 43.

That most outrageous changes in the case at bar have been made on the respective books in the land offices is patent to even casual observation. Now, these changes in the records were not accidental. Pen- and pencils without some hand to guide them do not, in the ordinary course of human events, make erasures or alterations on records or deface the same. There was a motive, then, at the back of these alterations and a hand to back that motive and effectuate it.

Defendants Saunders and Wilson would be moved by every consideration of self-interest to maintain the record as it was, while only plaintiff or some one interested in his success would be desirous of making any change.

If these alterations existed only to the extent already set forth, as admitted by Widdecombe, then that was sufficient to put Widdecombe, the agent or undisclosed principal, on inquiry, and this was sufficient as notice. If, on the other hand, as Widdecombe says in another place, the records were in precisely the same condition as now when he entered the land, then, certainly, owing to the very looks of the records, as shown by the Exhibits C, G, and others, there could not be any quibble whatever over the question that thereby he was put on inquiry, and that is undoubtedly sufficient

as evidence of notice, for a purchaser with notice and a purchaser in bad faith are correlative terms and the holder of a legal title in bad faith must always yield to a superior equity. In such case the holder of the legal title may be secure as against the United
256 States, but not as against one who had acquired a prior right from the United States in force when his patent issued. Widdecombe *v.* Childers, 124 U. S., *supra.*

Again, Freeman complied with all the terms and conditions necessary to entitle him to a patent to the tract of land in controversy. Having done so, he acquired a vested interest therein and became the equitable owner thereof, and while his entry or location remains in full force his rights in the premises cannot be defeated by the issuance to another party of a patent to the same tract. The public faith has become pledged to the prior party, and any subsequent grant of the same tract to another party is void unless the first location be vacated. Wirth *v.* Branson, 98 U. S., 118; Branson *v.* Wirth, 17 Wal., 32; Moore *v.* Robbins, 96 U. S., 530; Stark *v.* Starrs, 6 Wal., 402. And the fact that a patent was issued to Freeman for a different tract of land cannot affect or defeat his right to the premises in dispute. Wirth *v.* Branson, *supra.*

We have been cited to the case of Widdecombe *v.* Mercer, 72 Mo., 588, and Sensendorfer *v.* Neal, 66 Mo., 669, and especially the latter, as decisive of this case. Doubtless this is so; but, as shown by the former cases cited, we have long since ceased to follow those cases.

Holding these views, we affirm the decree of the circuit court. All concur.

T. A. SHERWOOD.

257 And afterwards, to wit, on the 16th day of May, 1894, the further following proceedings were had in said cause, to wit:

ROBERT G. HEDRICK, Appellant,
vs.
ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY *et al.*, Respondents.

Now, at this day, there *is* presented to the Honorable James B. Gantt, presiding justice of division No. 2 of the supreme court of the State of Missouri, in chambers, a writ — error to the Supreme Court of the United States, a citation directed to said respondents, citing and admonishing them to be and appear at a Supreme Court of the United States on the 15th day of June, 1894, and a supersedeas bond in the sum of five hundred dollars; which said writ of error is allowed, said citation signed, said supersedeas granted, and said bond filed and ordered to be made a part of the record herein.

Which said bond is in words and figures as follows, to wit:

Appeal Bond.

Know all men by these presents that we, Robert G. Hedrick, as principal, and A. C. Widdicombe and J. F. Gruelich, as sureties, are

held and firmly bound unto the Atchison, Topeka and Santa Fe Railroad Company and James G. Wilson and John G. Saunders in the full and just sum of five hundred dollars, to be paid to the said Atchison, Topeka and Santa Fe Railroad Company and James G. Wilson and *James* G. Saunders; to which payment, will and truly — be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

258 Sealed with our seals and dated this fourteenth day of May, A. D. 1894.

Whereas lately, at the October term, A. D. 1893, of the supreme court of Missouri, in a suit depending in said court between Robert G. Hedrick, plaintiff, and The Atchison, Topeka and Santa Fe Railroad Company and James G. Wilson and John G. Saunders, defendants, judgment was rendered against the said plaintiff, and the said plaintiff having obtained a writ of error to the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants, citing and admonishing them to be and appear at the Supreme Court of the United States, to be held at Washington, D. C., on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Robert G. Hedrick, plaintiff, shall prosecute said writ to effect and answer all damages and costs if he fails to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

ROBERT G. HEDRICK. [SEAL.]
A. C. WIDDICOMBE. [SEAL.]
J. F. GRUELICH. [SEAL.]

STATE OF MISSOURI, } *ss:*
County of Cole, }

The within bond is hereby approved in vacation, at chambers, on this 16th day of May, 1894, and a supersedeas is hereby granted until the same is heard by the Supreme Court of the United States.

259 Witness my hand and official signature this 16th day of May, 1894.

JAS. B. GANTT,
Presiding Judge of Division No. 2
of the Supreme Court of Missouri.

And afterwards, to wit, on the 12th day of June, 1894, the further following proceedings were had in said cause, to wit:

ROBERT G. HEDRICK, Appellant,
vs.
ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY *et al.*,
Respondents.

Now, at this day, comes the clerk of this court, and, upon his application and for good cause shown, it is ordered that the time for

preparing the transcript herein to the Supreme Court of the United States be extended 60 days from and after this date.

260 The following exhibits appear amongst the original papers sent to the office of the clerk of the supreme court:

EXHIBIT "A."

No. 42621. LAND OFFICE AT BOONVILLE, MO.
Sept. 1*st* [*August* 31*st*],* 1885.

I, Robert G. Hedrick, of Marion county, Indiana, do hereby apply to purchase the west half of southeast qr., section twenty-eight (28), in township sixty-one (61), of range 14, containing eighty (80) acres according to the returns of the surveyor general, for which I have agreed with the register to give at the rate of $1.25 per acre.

ROBERT G. HEDRICK,
Per A. C. W.

I, Gustave Reiche, register of the land office at Boonville, Mo., do hereby certify that the lot above described contains 80 acres, as mentioned above, and that the price agreed upon is $1.25 per acre.

GUSTAVE REICHE, *Register.*

UNITED STATES LAND OFFICE.
BOONVILLE, MO., *Dec.* 26, 1890.

I, Wm. McCracken, register of the United States land office at Boonville, Mo., do hereby certify that the copy hereto attached is a true and correct copy of the original application, No. 42621, of Robert G. Hedrick, for W. ½, S. E. ¼, sec. 28, tp. 61, R. 14, as the same appears now on file in this office.

WM. McCRACKEN, *Register.*

[* Words and figures enclosed in brackets erased in copy.]

Exhibit B.

Township 61 north, range No. 14 west, district of Chariton, Mo.

Description of tract.				Contents.		Rate per acre.		Purchase money.		Name of purchaser.	Date of sale.	Number of receipt and certificate of purchase.	To whom patented.	Date of patent.	Where recorded.	
Part of section.	Sec.	Twp.	Range.	Acres.	100ths.	Dols.	Cts.	Dols.	Cts.						Volume.	Page.
†640. N. ½ N. E. ¼	28	61 N.	14 W.	80	00	... ..	75	60	00	John Glasgow	1855, Aug't 27	6326	†x			
S. E. N. E. & E. ½ S. E.	"	"	"	120	00	.....	75	90	00	Hugh Chapman	1855, Oct. 2	7013	†x			
S. W. N. E.	"	"	"	40	00	1	25	50	00	John Glasgow.	1853, Dec. 11	8268	†x			
E. ½ N. W. ¼ & N. W. ¼ N. W.; see sec. 20.	.....	.....	.....	120												
S. W. ¼ N. W. qr.	"	"	"	40	00	1	25	50	00	William B. Morrison	1857, September 26th	14 60				
†* W. ½ S. E. ¼	"	"	"	80	00	1	25	100	00	Robert G. Hedrick	Sept. 1, 1885.	42621	Correct; see Com. letter Feb'y 15, 1887.			
W. ½ †* S. E. † (Error should be in R. 17;) (see Com. letter Feb'y 15, 1887.)				80	00	Cavil M. Freeman, ass. of Thomas Huelkeld.					1856, July 25.	Military land warrant No. 8479, act of 3rd March, 1855. Belongs to R. 17.				
E. ½ S. W. ¼ & S. W. ¼ S. W. ¼; see sec. 20.	....	.....	.....	120												
E. ½ S. E. ¼, 29, & N. W. ¼ S. W. ¼.	"	"	"	120	00	1	25	150	00	Henry Cem	1841, February 24	22827	†See 28, 61, 15.			
N. E. ¼ S. E. ¼, 29, & N. W. ¼ S. W. ¼.	"	"	"	80	00	.....	.....	7	.....	John W. Link	October 29th, 1870	8106	H. act May 20, '62.	Commuted; see cash receipt 41487.		
N. E. ¼ S. E. ¼, 29, & N. W. ¼ S. W. ¼.	"	"	"	80	00	1	25	100	00	Jno. W. Link	May 30, 1871	41487	Commuted hd. No. 8106.			

† Written in pencil.

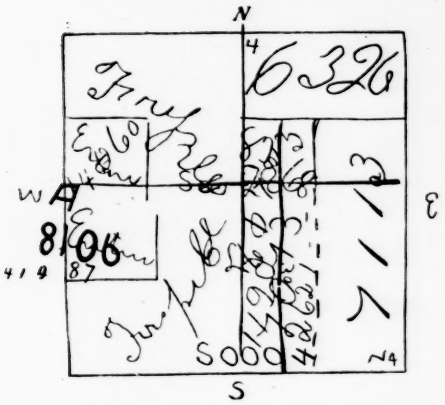
U. S. Land Office, Boonville, Mo., *Dec.* 26, 1890.

I, Wm. McCracken, register of the U. S. land office at Boonville, Mo., do hereby certify that the above and foregoing is a true and correct exhibit and copy of sec. 28, twp 61, of range 14 W., as the same appears on the tract book on file in this office. On the line where the W. ½ S. E. ¼ appears, marked * and noted in red ink, viz., (Error should be in R. 17), there appears to have been an erasure where the name "Cavil M. Freeman, ass. of Thomas Huelkeld," appears; also on the same line an erasure appears at the word "military," and the words Cavil M. Freeman, ass. of Thomas Huelkeld, written in; also the word "military" is written in at the place of the last-named erasure.

And I further certify that this office is not provided with a seal.

WM. McCRACKEN, *Register.*

262 EXHIBIT C.



BOONVILLE, Mo., *Dec.* 26, 1890.

I, Wm. McCracken, register of the United States land office at Boonville, Mo., do hereby certify that the diagram hereto attached is a true copy of section 28, twp. 61, range 14 W., as the same appears on the plat on file in this office, as near as I am able to trace the same, and that there are some interlineations and figures in the W. ½ S. E. ¼ and the S. W. ¼ N. E. ¼ of said section 28 which are unintelligible or illegible.

WM. McCRACKEN, *Register.*

263

EXHIBIT D.

(Act 3rd March, 1855.)

Monthly abstract of locations on public lands "subject to private entry," made for the month ending July 31st, 1856, at the land office at Milan, Mo., on military land warrant certificates issued pursuant to the 1st section of the act of Congress entitled "An act in addition to certain acts granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States," approved March 3, 1855.

Register's and receiver's No.*	Number of the warrant.	Warrant certificate.		In whose favor.	Tract located.				Date of location.	By whom located.	Remarks.
		Date.	No. of acres.		Quarter section or part of quarter section.	Township.	Range.	Contents.			
* * 1252½	* * 8470	* * Oct. 11th, 1855	* 80	* * * Thomas Huelkeld...	* * * W. ½ S. E	* 61	* 17	* 80	* * July 25, 1856	* * * Cavil M. Freeman...	* * * This was omitted on the register; hence the half No.

I, Wm. McCracken, register of the United States land office at Boonville, Mo., do hereby certify that the foregoing is a true copy of the abstract of warrant locations, act of March 3, 1855, as the same appears of record in this office. The figures 17, describing the range, shows an erasure and the figures 17 inserted.

LAND OFFICE AT BOONVILLE, MO., *Dec* 26, 1890.

WM. McCRACKEN, *Register.*

264 EXHIBIT "E."

$\frac{12239}{87}$.

Refer in reply to this initial, "C."

4–86–53. W. H. H.
M. E. N. H.
J. H. P.
W. O. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb'y 15th*, 1887.

Register and receiver, Boonville, Mo.

GENTLEMEN: I am in receipt of your letter of Jan'y 27th, 1887, stating that your records show that the W. ½ of S. E. ¼, sec. 28, t'p 61, N., R. 14 W., was located by Cavil M. Freeman July 25, 1856, per warrant No. 8470, act 1855, and that you were shown an abstract of title from the records of Adair Co., Mo., a regular chain from said Freeman to the present occupant of the land, Mr. James H. Sanders.

In reply you are informed that Cavil M. Freeman located the W. ½ of S. E. ¼, sec. 28, t'p 61, R. 17 W., July 25, 1856, per warrant No. 8470, 80 acres, act 1855, for which a patent was issued Sept. 18, 1859, and you will see that your records agree with the above, as shown by the records and files in this office.

Very respectfully, S. M. STOCKSLAGER,
Ass't Commissioner.

U. S. LAND OFFICE,
BOONVILLE, MO., *Dec.* 26, 1890.

I, Wm. McCracken, register of U. S. land office at Boonville, Mo., do hereby certify that the above and foregoing is a true copy of Commissioner's letter "C," dated Feb'y 15, 1887, now on file in this office.

WM. McCRACKEN, *Register.*

EXHIBIT F.

Township 61 north, range No. 17 west, district of Chariton, Mo.

Description of tract.				Contents.		Rate per acre.		Purchase money.		Name of purchaser.	Date of sale.	Number of receipt and certificate of purchase.	To whom patented.	Date of patent.	Where recorded.	
Part of section.	Sec.	Twp.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
* * *	*	*	*	*	*	*	*	*	*	* * *	* *	*	* * *	* * *		
W. ½ S. E. ¼	28	61 N.	17 W	80	00	Cav il	M.	Fr	eem	an, assgn. of Thos. Huelkeld	July 25, 1856	Military land warrant 8470, Oct. 18 5.				
†Cancelled; see [S. E. ¼]† Letter, Jan. 12, 1861.	"	"	"	[160	00	Pitt	Co	oke,	ass	s]† James Long	1857, [May 21st	M L. warrant No. 7700],† a ct 3rd March, 1855				
E. ½ S. E. ¼	"	"	"	80	00	1	25	100	00	Wm. M. Vancleve	Sept. 19, 1885	426.4				

[† Words and figures enclosed in brackets erased in copy.]

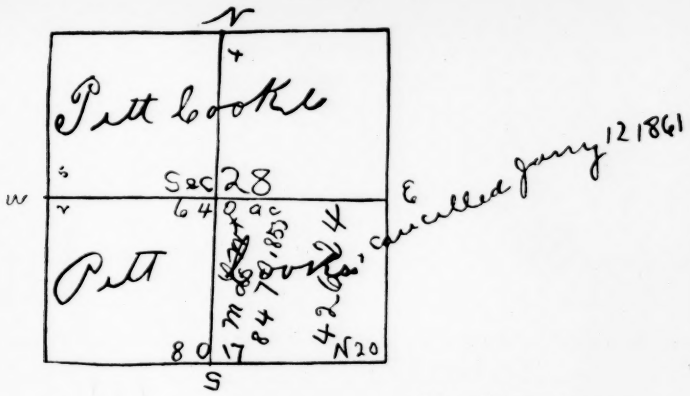
U. S. LAND OFFICE, BOONVILLE, MO., *Dec.* 26, 1890.

I, Wm. McCracken, register of the United States land office at Boonville, Mo., do hereby certify that the above and foregoing abstract of the W. ½ S. E. ¼, sec. 28, twp. 61, of range 17 west, is a true copy of the tract book on file in this office; also abstract of S. E. ¼, sec. 28, twp. 61, R. 17, to Pitt Cook, ass. James Long; also E. ½ S. E. ¼, sec. 28, twp. 61, R. 17, to Wm. M. Vancleve, which is a true and correct copy of the tract book on file in this office.

And I further certify that this office is not provided with a seal.

WM. McCRACKEN, *Register.*

266 EXHIBIT G.



U. S. LAND OFFICE,
BOONVILLE, Mo., *Dec.* 26, 1890.

I, Wm. McCracken, register of the U. S. land office, Boonville, Mo., do hereby certify that the above diagram is a true tracing and copy of sec. 28, twp. 61, R. 17, as the same appears on the plat book on file in this office.

And I further certify that this office is not provided with a seal.

WM. McCRACKEN, *Register.*

EXHIBIT "H."

GENERAL LAND OFFICE, *January 12th*, 1861.

GENTLEMEN: The location made at Milan, Mo., May 21st, 1857, by Pitt Cooke, of Erie Co., Ohio, upon the S. E. ¼ of sect. 28, T. 61, R. 17, with land warrant No. 7709, for 160 acres, act 1855, has been canceled for the reason that the W. ½ of the S. E. ¼ of sect. 28, T. 61, R. 17, was located July 25th, 1856, with land warrant No. 8470, for 80 acres, act 1855. You will make the proper notes upon the books and plats of your office, referring to this letter by its date. The duplicate certificate of location having been surrendered to this office by Pitt Cooke, land warrant No. 7709 has been returned to him.

Very respectfully your ob't servant,

JOSEPH S. WILSON,
Commissioner.

Register & receiver, Boonville, Mo.

UNITED STATES LAND OFFICE,
BOONVILLE, Mo., *Dec.* 26, 1890.

267 I, Wm. McCracken, register of the United States land office at Boonville, Mo., hereby certify that the foregoing and annexed letter is a true and correct copy of the Com-

missioner's letter "C," dated Jan. 12th, 1861, as the same appears on file in this office. I further certify that this office is not provided with a seal.

WM. McCRACKEN, *Register.*

268 STATE OF MISSOURI, *set:*

I, John R. Green, clerk of the supreme court of the State of Missouri, do hereby certify the foregoing to be a true, full, and complete transcript of the record and proceedings in the above-entitled cause, as fully as the same remains on file and of record in my office.

Seal of the Supreme Court of Missouri.

In testimont whereof I hereunto set my hand and affix the seal of said court, at office, in the city of Jefferson, this 27th day of July, A. D. 1894.

JNO. R. GREEN, *Clerk,*
By —— ——, *D. C.*

269 Supreme Court of the United States, October Term, 1894.

ROBERT G. HEDRICK, Plaintiff in Error,
v.
THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY and JAMES G. WILSON and JOHN G. SAUNDERS, Defendants in Error.

Specifications of Error.

The plaintiff in error says that in rendering judgment in this action the supreme court of the State of Missouri erred:

I.

In holding that the equitable title to the land here in controversy passed to Cavil M. Freeman under the proceedings had by him for an entry of public lands on July 25, 1856.

II.

In holding that the entry of the tract in controversy by the plaintiff in error and the issue to him of a patent therefor did not vest in him, under the laws of the United States, the full legal and equitable title to said land.

III.

In holding that the patent of the United States issued to the plaintiff in error for said land vested the legal title thereto in him in trust for the defendants in error or those claiming under them.

IV.

In holding that there was, at the date of the entry of the plaintiff in error, any impediment against the acquisition of a com-
270 plete and valid title to the land in question by any person applying therefor under the laws of the United States.

V.

In not holding that the patent of the United States issued to the plaintiff in error pursuant to his entry vested in him, under the laws of the United States, the full title, legal and equitable, to the land in said patent mentioned and described.

VI.

In holding that the plaintiff in error in applying to make his entry was chargeable with notice that in the application of Cavil M. Freeman to locate certain lands a mistake had been made, and that said Freeman intended to enter and did enter the land in controversy.

VII.

In not giving judgment in favor of the plaintiff in error for the possession of the land in controversy.

A. C. WIDDICOMBE,
Att'y for Plaintiff in Error.

STATE OF MISSOURI, *sct:*

I, John R. Green, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true, and complete copy of the specifications of error filed in the above-entitled cause in said court on the 9th day of August, 1894, as fully and complete as the same remains on file in my office.

Witness my hand as clerk and the seal of said court, at the city of Jefferson, State of Missouri, this 9th day of Aug., 1894.

Seal of the Supreme Court of Missouri.

JNO. R. GREEN, *Clerk*,
By T. S. MOSBY, *D. C.*

[Endorsed:] 778, 15,662.

271 [Endorsed:] Case No. 15,662. Supreme Court U. S., October term, 1894. Term No., 778. Robert G. Hedrick, pl'ff in error, *vs.* The Atchison, Topeka & Santa Fe R. R. Co. & *al.* Assignment of errors. Filed Aug. 11, 1894.

272 Registered { letter / parcel * } No. 1409, P. O., Washington, D. C.

Received, Nov. 5, 1894, of A. C. Widdicombe, Sun bldg., 1.20, a { letter / parcel * } addressed to Ben. Eli Guthrie, Macon city, Mo. Station C.

HENRY SHERWOOD, *P. M.*,
Per BLUNEWARD.

[*Erased with pencil in copy.]

CITY OF WASHINGTON, }
District of Columbia. }

On this 5th day of November, A. D. 1894, before me, the undersigned, a notary public within and for the District aforesaid, personally appeared A. C. Widdicombe, who, being duly sworn in accordance with law, upon his oath deposes and says that he, this 5th day of November, 1894, mailed to the address of Ben. Eli Guthrie, at Macon city, Missouri (the attorney of record of defendants in error in the case of R. G. Hendrick *v.* The Atchison, Topeka and Sante Fe Railroad Company *et al.*), a copy of the attached specification of errors and statement of the parts of record plaintiff in error thinks necessary for consideration in said cause.

A. C. WIDDICOMBE.

Subscribed and sworn to before me this 5th day of November, 1894.

[Seal of Edmond L. McClelland, Notary Public, District of Columbia.]

EDMOND L. McCLELLAND,
Notary Public, D. C.

273 In the Supreme Court of the United States, October Term, 1894.

ROBERT G. HEDRICK, Plaintiff in Error,
vs.
THE ATCHISON, TOPEKA & SANTE FE RAILROAD COMPANY and JAMES G. WILSON and JOHN G. SANDERS, Defendants in Error. } = 778.

Statement of Errors on Which Plaintiff in Error Intends to Rely and of the Parts of Record Which He Thinks Necessary for the Consideration Thereof.

The plaintiff in error says that in rendering judgment in the action the supreme court of the State of Missouri erred:

I. In holding that the equitable title to the land here in controversy passed to Cavil M. Freeman under the proceedings had by him for an entry of public lands on July 25, 1856.

II. In holding that the entry of the tract in controversy by the plaintiff in error and the issue to him of a patent therefor did not vest in him, under the laws of the United States, the full legal and equitable title to said land.

III. In holding that the patent of the United States issued to the plaintiff in error for said land vested the legal title thereto in him in trust for the defendants in error or those claiming under them.

IV. In holding that there was, at the date of the entry of the plaintiff in error, any impediment against the acquisition of
274 a complete and valid title to the land in question by any person applying therefor under the laws of the United States.

V. In not holding that the patent of the United States issued to

the plaintiff in error pursuant to his entry vested in him, under the laws of the United States, the full title, legal and equitable, to the land in said patent mentioned and described.

VI. In holding that the plaintiff in error in applying to make his entry was chargeable with notice that in the application of Cavil M. Freeman, to locate certain lands a mistake had been made, and that said Freeman intended to enter and did enter the land in controversy.

VII. In not giving judgment in favor of the plaintiff in error for the possession of the land in controversy.

The parts of record which the plaintiff in error thinks necessary for consideration *is* the transcript or copy of the original papers in the above-entitled cause, including all the pleadings, bill of exceptions, and original exhibits as made out by the clerk of the supreme court of Missouri, and such portions of the certified transcript that was made by the clerk of the circuit court and particularly referred to in the opinion of the supreme court of Missouri—that is to say, print page 1 to and including the line "113, clerk's certificate," on page 14 (paging on the lower left-hand corner of record).

On page 29 print commencing with the words "Mr. Park then offered" to and including the words in the brackets ending "Adair county)," on page 30.

275 On page 123, commencing with the words "Mr. Guthrie offered and read in evidence," in the sixth line on said page, print to and including "Ex. 30," near the bottom of said page.

Print page 138 and the remainder of the record.

A. C. WIDDICOMBE,
Attorney for Complainant in Error.

Washington, D. C., Nov. 5th, 1894.

[Endorsed:] 778, 15,662.

276 [Endorsed:] Case No. 15662. Supreme Court U. S., October term, 1894. Term No., 778. Robert G. Hedrick, pl'ff in error, *vs.* The Atchison, Topeka & Santa Fe R. R. Co. *et al.* Statement of errors & designation by pl'ff in error of parts of record to be printed. Filed Nov. 6, 1894.

Endorsed on cover: Case No. 15,662. Missouri supreme court. Term No., 154. Robert G. Hedrick, plaintiff in error, *vs.* The Atchison, Topeka & Santa Fe Railroad Company, James G. Wilson, and John G. Sanders. Filed August 10th, 1894.

167-673

167-673

Office Supreme Court, U. S.
FILED
NOV 20 1896
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT

—OF THE—

UNITED STATES.

OCTOBER TERM, 1896.

ROBERT G. HEDRICK,
Plaintiff in Error,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY, JAMES G. WILSON and JOHN G. SAUNDERS,
Defendants in Error.

No. 154.

In error to the Supreme Court of the State of Missouri.—Division No. 2.

Statement, Assignment of Errors, and Brief and Argument for Plaintiff in Error.

ALBERT C. WIDDICOMBE,
MARCUS T. C. WILLIAMS,
For Plaintiff in Error.

GERARD-WOODY PRINTING CO., KANSAS CITY.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM. 1896.

ROBERT G. HEDRICK,
Plaintiff in Error,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY, JAMES G. WILSON and JOHN G. SAUNDERS,
Defendants in Error.

No. 154.

In error to the Supreme Court of the State of Missouri.—Division No. 2.

STATEMENT.

This is an action of ejectment brought by plaintiff in error, against the Atchison, Topeka & Santa Fe Railroad Company, one of the defendants in error, in the Circuit Court of the County of Adair, in the State of Missouri, for the recovery of the possession of the following premises in said Adair county, and described in the petition of ejectment as follows, to wit: A strip of land one hundred feet wide on the north and west of the Santa Fe survey, and fifty feet wide on the south and east of said survey, through the northwest quarter of of the southeast quarter of section 28, in township 61, of range 14; and also a tract of land one hun-

dred feet wide on each side and along the center line of said railway company's survey from where it enters the southwest quarter of the southeast quarter of section 28, in township 61, of range 14, at station No. 7078—39, for a distance of one hundred and eleven feet to station No, 7079—50; from thence a tract fifty feet in width on the north and west side of said survey for a distance of four hundred and fifty feet to station 7084, from thence one hundred feet north and west of said survey, and fifty feet on south and east of said survey for a distance of thirteen hundred and ten feet to station 7097—10, to where said survey leaves said described forty acres, as the same is located over and across said southwest quarter of the southeast quarter of section 28, in township 61, of range 14, being all the land claimed and occupied by said rail road company situated in the west half of the southeast quarter of section 28, township 61, of range 14, in Adair county, Missouri.

The petition was filed on the 11th day of September, 1890, is in the usual form and contains all the averments in this class of cases.

At the October Term, 1890, of the Adair Circuit Court, to which the cause was returnable, defendants in error, James G. Wilson and John G. Saunders, were, upon their own motion, made parties defendant herein.

At the April Term, 1891, the defendant Railway Company filed their separate answer in said cause, denying each and every allegation in said petition, except that it admits that it is in possession of the premises described in the petition, and avers that said possession is rightful and lawful.

And for a farther and separate defence said Railway Company alleges in its said answer that plaintiff and those under whom he claims have never been in possession of the premises sued for,

nor paid any taxes thereon, but defendant and its grantors have been in actual, open, notorious and adverse possession of said premises for more than thirty years next before the filing of the petition, holding and claiming the same against all persons whomsoever, paying taxes thereon in good faith, and making lasting and valuable improvements thereon.

The defendant railway company in said answer further alleges that on the 25th day of July, 1856, one Cavil M. Freeman duly entered the west half of the southeast quarter of section 28, in township 61, of range 14, which includes the land in controversy, by locating thereon under the Military Bounty Land Act of March 3, 1855, Military Bounty Land Warrant 8470, and thereupon received from the register of the land office at Milan, Missouri, where said land was subject to entry a certificate of such entry. That, by accident, mistake or oversight, the application of said Freeman failed to describe said land, and placed it in some other range, but that it was his intention to enter said land, as it was the intention of said register and receiver that he should enter and locate said warrant upon said land, and that the register of said land office issued to him said certificate in which the land was properly described as the west half of the southeast quarter of section 28, township 61, of range 14, and the proper notations of such entry were entered on the tract and plat books of said office, showing such location and entry. That thereupon said Freeman accepted said certificate and entered into possession of said land and remained in possession thereof, paying taxes thereon until February 29, 1860, when he sold and conveyed the same by general warranty deed to William A. Lane, who entered into possession of said premises and paid taxes thereon

until April 15, 1875, when he sold and conveyed the same by general warranty deed to William E. Parcells, who thereupon entered into possession and paid taxes on said land; that by regular mesne conveyances the right and title of said Parcells was sold and conveyed to John G. Saunders and James G. Wilson, and all of said grantees of Parcells, including Saunders and Wilson, entered into the actual possession of said premises, improved same in good faith and paid taxes thereon until January 1, 1887. That said Saunders and Wilson by their several conveyances sold the premises described in the petition to the Chicago, Santa Fe and California Railway Company, of Iowa, which took possession of same and commenced to build in good faith its railway over said premises, and that said Saunders and Wilson by their several warranty deeds to said Railway Company, under which company defendant by regular conveyances claims to own said premises and the right to the possession thereof, and has in good faith made lasting, permanent and very valuable improvements thereon. Neither said Freeman nor his assignees ever made any claim of title to the land described in the application of Freeman to locate said land warrant; never had possession thereof, or paid taxes thereon, but have at all times held and claimed the land in controversy as the land located and entered by said Freeman.

The answer of the Railway Company further alleges:

"That on the 20th day of July, 1886, the plaintiff, with full knowledge and notice of the location of the land warrant and the entry of said land by said Cavil M. Freeman, and the fact of the possession of said Freeman and his grantees, and also the notations of said tract and plat books in the land office, for the purpose of cheating and defrauding the then owners of said land and their

grantors, did fraudulently and wilfully cause the notations and entries of the said tract and plat books to be changed and altered, and did fraudulently enter said land, and caused to be issued to himself therefor a patent thereon from the general government, with the view of cheating and defrauding the then owners of said land and their grantors, and to secure the same with the valuable improvements thereon. That afterwards, on the 7th day of January, 1887, he filed said patent for record in the office of the recorder of deeds in Adair county, Missouri, and the same was duly recorded in book 17, at page 469, of the records of said office.

"The defendant is informed and believes that one A. C. Widdecombe, who at one time was register of the land office of Boonville, Missouri, in which office the records, books and papers of the former office at Milan, Missouri, were then and are now kept, and who is the son-in-law of the plaintiff, was the plaintiff's agent and attorney, and conducted and transacted the business for plaintiff, and secured said patent to be so as aforesaid fraudulently and illegally issued. And this defendant avers that said Widdecombe, at the time of making said entry and securing said patent for plaintiff, and long prior thereto, had full knowledge of all the facts and circumstances connected with the entry of said Freeman, and also the knowledge that said land was occupied and owned by the grantees of said Freeman. And defendant is also informed and believes that while said land is entered and patented in plaintiff's name, that the said Widdecombe is the real beneficiary of said transaction, and that he has large, if not the sole pecuniary interest in said land, and is in fact and in truth the real party plaintiff in interest in this action.

"Defendant avers that it and its grantors have

by reason of the premises acquired and become possessed of, and in equity and good conscience are entitled to all the equitable right and title of said premises and every part thereof, and that it would be wholly inequitable and unjust to allow plaintiff to take said premises from them, and that in equity plaintiff is and ought to be held as a mere trustee of the legal title for the use and benefit of defendant: wherefore defendant prays that the plaintiff be declared a trustee for the defendant, and that whatever title he may have, if any, by reason of the said entry and patent, be divested out of the plaintiff and vested in this defendant, and for all other and proper relief, orders and decrees that should in equity and good conscience be given, that are reasonable and right, and for general relief."

At the October Term, 1890, of the Circuit Court of Adair County, defendants in error, James G. Wilson and John G. Saunders, were, upon their own motion, made parties defendant and filed their separate answer to plaintiff's petition, similar in substance and effect to that filed by defendant Railway Company. (Record, p. 2 a) - 2 5)

To these answers, plaintiff, on the 28th of April, 1891, filed his reply denying each and every allegation therein contained. (Record, p. 33.)

The cause came on for trial before the Circuit Court of Adair County, and was tried by said court on the 28th day of April, 1891, without a jury, and afterward, to wit, on the 4th day of May, 1891, said Circuit Court rendered a decree in said cause, finding the issues for said defendants, holding that plaintiff held the title by patent to said premises in controversy as trustee for the defendant Railway Company and divesting title to said premises out of plaintiff and vesting it in the defendant company. (Record, p. 3.)

Plaintiff in due time filed his motion for a new trial, which was by the court overruled, and to which action of the court plaintiff excepted at the time. Upon the overruling of said motion and the rendition of said judgment plaintiff duly appealed said cause to the Supreme Court of the State of Missouri, where, afterward, at the October Term, 1893, and on the 27th of February, 1894, the judgment and decree of the Circuit Court of Adair County in said cause was by said Supreme Court in all things affirmed. (Record, p. 68.)

To reverse this judgment, plaintiff in error duly sued out his writ of error to this court.

On the trial of said cause before the judge of Adair County Circuit Court plaintiff in error offered and read in evidence a patent from the United States, in due form, conveying to him the land in controversy, dated July 20, 1886, and duly recorded on the 7th of January, 1887, in the office of the recorder of deeds of Adair county, Missouri. (Record, p. 34.) ~~This patent is not found in full in the printed record in this cause.~~ It was admitted on said trial that defendant railway company was in possession of the premises sued for at the time of the commencement of this action, and since January 1, 1887. That the value of the rents and profits was $1.50 per acre, and the land in controversy contained ten acres. Plaintiff then rested. (Record, p. 34.)

To sustain the issues on their part, defendant offered and read in evidence a duly certified copy of the register's duplicate certificate of location, in the name of Cavil M. Freeman, as follows: (Record, p. 35.)

"Military Bounty Land Act of March 3, 1855.

"Milan, Mo., Register's Office, July 25, 1856.

"Military Land Warrant No. 8470, in the name of Thomas Huelkeld, has this day been lo-

cated by Cavil M. Freeman upon the W. ½ S. E. ¼ of Section 28, in Township 61, of Range 14, subject to any pre-emption claim which may be filed for said land within forty days from this date.

"Contents of tract located, 80 acres.

"J. Seaman, Register."

They next introduced the plat book from the office of the county clerk of Adair county, certified by the register of the land office on July 16, 1866, which had the following notation on the west half of the southeast quarter of Section 28, T. 61, R. 14: "Cavil M. Freeman, July 25, 1856." (Record, p. 36.)

They next introduced in evidence a general warranty deed frrom said Cavil M. Freeman to William H. Lane, conveying the W. ½ of southeast quarter of section 28, township 61, range 14, and other lands dated February 20, 1860, and other mesne conveyances of said land to defendants Saunders and Wilson, and from them to the Chicago, Santa Fe and California Railway Company for the land in controversy. All of these deeds are in regular form, duly acknowledged and recorded shortly after their respective dates and made for a good and valuable consideration. (Record, p. 36-37.)

It was agreed and admitted on said trial, that the Chicago, Santa Fe and California Railway Company of Iowa, is a railroad corporation duly organized and existing under the laws of the state of Iowa; also that the defendant, The Atchison, Topeka and Santa Fe Raidroad held and is in the possession of said railroad from Chicago to Kansas City under and by regular conveyances in due form from the Chicago, Santa Fe and California Railway Company. (Record, p. 38.)

Defendants then introduced evidence showing possession since 1875, and payment of taxes from 1861, upon said land by William A. Lane and

their other grantors, and that the railroad was built through said land in the spring of 1887, and that plaintiff's attorney was present about May 1, 1887, and saw teams working on the land for the railroad at that time and tried to compromise with defendants Saunders and Wilson in possession of the eighty acres in controversy. (Record, p. 39)

(Record, p. 44) Joseph Park testified that he was an attorney and lived in La Plata. That he was employed by Wilson and Saunders in January, 1887, in reference to looking up the title to the land in controversy, and went to Boonville for the purpose of examining the land records there. That he examined the tract-book of section 28, township 61, range 14, and section 28, township 61, range 17, and examined the entry of the land in controversy by Cavil Freeman. Witness shown "Exhibit B," and he identified same as a copy of original tract-book of section 28, T. 61, R. 14, and explained to the court his observations made in *January*, 1887, in relation thereto, as follows: W. ½ of the S. E. ¼ of section 28, township 61, range 14, 80 acres, Cavil M. Freeman, assignee of Thomas Huelkeld, July 25, 1856, military land warrant No. 8470, dated March 3, 1855. Now that was the numbers of the record at that time without any erasure or any interlineations. On December 26, 1890, there appeared on this line this star in pencil marked in red ink "Belongs to R. 17." And where the words "Cavil M. Freeman" now appears is a plain erasure and mutilation and then darker and much later ink the name of Cavil M. Freeman re-written in the same place. And where the word "military" is written is a plain erasure and a total destruction of whatever had been written there, and the word "military" written in black ink at a much later date, and from its appearance in a different handwriting from the name and the oth-

er writing that was not erased. In January, 1887, I examined in the office what is known as the plat-book, relating to section 28, township 61, range 14, and my recollections as to my observations as to the notation on the west half of the southeast quarter was this, "Cavil M. Freeman, July 25, 1856," noted on the plat. Witness' attention called to "Exhibit C" attached to McCracken's deposition, which he stated he compared with the original the best he could, and saw it made—traced. The condition as shown is correct so far as we could make the marks, but there were so many erasures and re-markings that nothing but a glass could show it all. In January, 1887, the name of Cavil M. Freeman, July 25, 1857, appeared on the W. ½ of the S. E. ¼ of section 28, township 61, range 14, on the plat-book. In December 26, 1890, the W. ½ of S. E. ¼ of section 28, township 61, range 14, didn't appear to have the name of Cavil M. Freeman so it could be read at all. There appeared to have been erasures and mutilations, so that this plat is as correct a tracing as the register could make it, but it scarcely reads anything at all at the present time. Witness identified "Exhibit D", attached to McCracken's deposition, and stated he had seen the book from which it was made.

ecord, p. 87.)

ecord, p. 88.)

Q. I show you now and call your attention to the column "range" and to the figure "17," and get you to state if the figure "7" is as when copied as well as you remember? A. I can't testify to that. But I can tell you what appeared there: just as plain an erasure of the figure "4" where the figure "7" is written as anything can be. I met Mr. A. C. Widdicombe there on my visit in December, 1890. I heard him make oath and say the plaintiff in this case was his father-in-law. That he was about the office a great deal, and

made the written application for the entry of this land. That he was familiar with the work of the office. He said he signed his father-in-law's name by his initials, "A. C. W." I think that he said he was an expert with those books. It seems to me he had been connected with those offices about sixteen years. I am not certain. He always represented himself as an expert, and having a knowledge of the books. He made no admissions about his knowledge of the state of this entry at that time. He did not pretend to deny anything at all about the record. I don't say he said anything about the erasures. He was standing right by during the taking of these depositions.

Q. Did he say that he knew of these erasures? A. Well, I don't know about that.

On cross-examination Mr. Park testified as follows: (Record, p. 47.)

When first in Boonville, I think it was January, 1887.

Q. When were you there again? A. The day after Christmas, in last December.

Q. Four years afterwards? A. In December, 1890, *three* years afterwards.

Q. When there the first time did you take any notes or memoranda from the records? A. I think I did, possibly.

Q. Do you know whether you did or not? A. No, sir; I could not say positively.

Q. When there three years afterwards did you make any notes on what you saw? A. No; I think not. The register made the notes.

Q. Are you testifying now as to your recollection of the condition of the records in 1887, or are you testifying from notes? A. I am testifying as to my recollection of that plat-book and as to

Cavil M. Freeman's name being on that book, and as to the red ink.

Q. You testify from your recollection in January, 1887, and state that the name Cavil M. Freeman was then on the record, and that you remember this without any notes or memoranda? A. Yes; without any notes or memoranda, for I went there for that purpose.

Q. Those other names and figures that were on the book, as you have testified were there in 1887, and were not there in 1890, as you remember did you testify to the same from your memory? A. Yes, I kept no notes.

Q. Did you have copies made? A. No; not in 1887. I went over to examine these entries.

Q. Did you not write down or make any memoranda of what you saw? A. No, sir; Well, I may; I don't remember. I haven't seen it since. The last time I was there was to take depositions, and to see these plat-books. I took the depositions of Hoge, McCracken and Widdicombe.

Q. Did you call the attention of any of the officials of the office, at the time you were there last, to the fact that the names had been changed since 1887? Did you call their attention to it? A. I don't think that I did.

Q. Did you call Mr. McCracken's attention to this erasure? A. Yes.

(Record, p. 48.)

Q. Did you call his attention to the fact that the plat-book had Freeman's name on it? A. The plat-book had Freeman's name on it both times.

Q. In the examination of Mr. McCracken and Hoge, did you say to them that in 1887 Freeman's name was there, and was not in 1890? A. I don't remember as I did.

Witness testified that he examined them in regard to the handwriting. They said the "Belongs to 17" was in the handwriting of Mr. Reiche,

who was the receiver in 1886 or before. These witnesses viewed the handwriting and said the red ink was in the handwriting of Mr. Wright, and that the "Belongs to 17 R." was in the handwriting of Mr. Reiche. The star business he knew nothing about: neither did he know anything about Cavil M. Freeman's name being written there, nor about the word "military." I think they said in their depositions they knew nothing about the name Cavil M. Freeman and the word "military." I think they said something about it being Mr. Reiche's.

Witness further testified that in 1887, when he went to Boonville, he went in the interest of Saunders and Wilson to see the entries in the plat-books and in the tract-book, and through them knew the Hedrick patent was of record. That he took some deeds for the railroad, and possibly knew of the existence of the Hedrick patent. Thinks that he did not represent the railroad in obtaining the right of way over the land in controversy. That he acknowledged the deed.

On re-direct examination witness testified that he thought he made a report to his clients in January, 1887, on his return from Boonville. That he thought Hoge testified that the "Belongs to 17 R." was in the handwriting of Reiche, who was in office from 1874 to 1886. He did not find Mr. Reiche. That, as a matter of fact, he did not represent the railroad in taking the right of way.

In re-cross-examination witness testified that he did not see the figure "7" in 1887, but saw it the last time, and could see there had been an erasure.

Exhibit B, C and D were read in evidence by defendant and are set forth in full in the printed record. (Record, p. 86.) (87-88)

Defendants then offered and read in evidence

the depositions of Hoge, McCracken and Widdicombe.

John J. Hoge testified that he was receiver of the land office at Boonville from October, 1885, until October, 1889. That the method of procedure where parties desired to make cash entries of land, the party made application for a particular tract of land, made it personally, or by mail, or by attorney. A written application was not always required. I might correct myself by saying if an application was granted, it must be in writing and signed by the party applying. That he knew nothing about the application for the land here in controversy by Robert G. Hedrick.

The tract-book was shown witness with reference to the W. ½ of S. E. ¼ of section 28, T. 61, in range 14, and he stated that "It shows that the W. ½ of S. E. ¼, section 28, T. 61, R. 14 west, 80 acres, at $1.25 per acre, making $100, entered by Robert G. Hedrick, Sept. 1, 1885, No. of receipt and certificate of purchase 42,661. I note error, afterwards corrected; see Commissioner's letter Feb. 15, 1887."

That entire record is in the same handwriting with the exception of the note in red ink; that note is, "Corrected; see Commissioner's letter Feb. 15, 1887," made, I think, in Mr. Wright's handwriting, the register at the time. In my opinion the other portion of that record is in the handwriting of Mr. Reiche. He was register September 1, 1885, at the time the entry was made.

Witness states he found other entries on the tract-book affecting the land in controversy, and immediately below the last above-described entry with the intermission of a blank line between.

Q. You may read to the stenographer in full that entry on the record just as it occurs. A. (Reads.) "West half of the southeast quarter

(error—shou'd be in R. 17, Com. letter, Feb. 15, 1887), 80 acres, Cavil M. Freeman, assignee of Thomas Huelkeld, 1856, July 25, military land warrant No. 8470, act of 3rd March, 1855, belongs to R. 17." That within the brackets is written in red ink. (Record, p. 86.)

Witness was then handed a magnifying glass and asked to examine the writing, and state in whose handwriting, "Cavil M. Freeman, assignee of Thomas Huelkeld is, if you know." A. I do not.

Q. State if there appears to have been a very perceptible erasure at the place where Cavil M. Freeman's name, and the words "assignee of Thomas Huelkeld" are written. A. I think that it shows there has been an erasure there, and in my opinion it was made before the name of "Cavil M. Freeman, assignee of Thomas Huelkeld," was written there. The erasure there seems to have been a rubbing, and these words put down afterwards.

Q. State what, in the usual order and course of business, would likely have been written there previous to the erasures. A. Where the name Cavil M. Freeman is, would be the price per acre, and the amount of purchase money, if a cash entry. If not a cash entry, it would be the price per acre, and the fees for entry, and at the other place would be written the name of the entryman. I do not know in whose handwriting "west half of southeast quarter" is. That in red ink is in the handwriting of Mr. Wright, who was register in 1887. I do not know in whose handwriting the figures "1856, July 25th" is.

Q. Can you see that there has been an erasure where the words "military land warrant" is written? A. Under the word "military" evidently there has been an erasure.

Q. What do you say about the word "land"? A. I do not see any evidence of it there under the words "land warrant." Where the word "military" appears written over an erasure is usually written the number of receipt and certificate of purchase, if a cash entry.

Q. State if there was not given to an entryman of land under a land warrant a certificate of his entry same as though he had made a cash entry, and if the certificate was not numbered the same as the cash-entry certificates, according to the usual order of business and according to the appearance of the books? A. I notice that wherever there is a military land-warrant entry the word "military" is written under the certificate, and that is my remembrance of the manner and mode of doing. The words "belongs to range 17" I think is in the handwriting of Mr. Wright, former register. Not positive. On looking more closely would think it was Mr. Reiche's. He went out in 1886, and was succeeded by Mr. Wright.

The book from which I have been testifying is the tract book of the Boonville land office, township 61, N., of range 14 west, and from the page including sections 28 and 31.

Witness requested to turn to township 61, of range 17, same record, and to page containing sections 28, 29 and 30, and to state in detail the order in which they come, all the entries affecting the west half of the southeast quarter of section 28, township 61, of range 17, commencing first, and giving it as it appears on the book.

A. West half southeast quarter, section 28, township 61 north, range 17 west, 80 acres, Cavil M. Freeman, assignee of Thomas Huelkeld, July 25, 1856, military land warrant 8470.

Q. State in whose handwriting that is in? A. I do not know.

Q. State if the east half of the southeast quarter section 28, township 61, range 17, marked error by William Van M. Vancleve, September 19, 1885, receipt 42,624, mailed J. G. Vancleve, Macon, Missouri, September 11, 1886, is not in the identical handwriting, and made in the same color of ink on the same page, with the handwriting with which the entries Cavil M. Freeman appears. A. I think they are in the same handwriting; that is, as far as the entries go. I think the entries immediately preceding and succeeding the entry of Vancleve and the entry of Cavil M. Freeman are in the same handwriting and in pale red ink. The entries of Vancleve, and Cavil M. Freeman are in black ink

Q. I will ask you what erasures appear on this entry in 17 by Cavil M. Freeman? A. I cannot distinguish that there has any erasures been made, but there is merely a smearing of the page afterwards.

A record shown witness, who identifies it as the record of the entry of military land warrants, and testifies: It is Milan military bounty land warrant abstract, act of 1855. Said record shows with reference to the west half of southeast quarter, section 28, township 61, range 17, as follows: Register and receiver's No. 1252½, and the date, October 11, 1855, 80 acres, in favor of Thomas Huelkeld, and the description as follows. West half of southeast quarter, section 28, township 61, range 17, contains 80 acres, date of location 25th of July, 1856, located by Cavil M. Freeman, and then it goes on: "This was omitted on the register, hence the half number."

Witness continues: There is an erasure in the column of range 17; 17 was written after it, I would say. I see other marks—two straight marks that would correspond with two straight marks im-

diately under the 14 above, and the figures 14 occur immediately above this 17 four times.

Witness identifies official plat-book of township 61, range 17, and is asked: "What appears on the whole of section 28?" A. Figures, section 28, Pitt Cook, on the north half of section 28, and also on the south half.

Witness testifies that the name, Pitt Cook, he thinks, is written in the same handwriting and color of ink as the entries in the tract-book immediately preceding between and succeeding the entries William M. Vancleve, and Cavil M. Freeman, and in pale red ink.

Q. State what appears on the west half of the southeast quarter of section 28, township 61, range 17? A. M. L. Wt. 8470, 1855, which means military land warrant. It is written in black ink, and appears to me to have been written at a much later date than the words Pitt Cook. In my opinion it appears to be about the same age as the writing of the names William M. Vancleve, 1885, and the name of Cavil M. Freeman in the tract-book.

Witness testified he had resided in Boonville since 1876. He had been acquainted with A. C. Widdicombe since 1880. His business has been a practicing attorney, and witness thought him as familiar with the records of the land office as that of any other man. While witness was in the office, it was customary to allow practicing lawyers to make examination of all papers on file. He was engaged in that business like other lawyers in the community. The tract-book and plat-book and the monthly report-book of sales are open to the inspection of lawyers and practitioners, under the control of the land officers.

Q. State if he had an opportunity to make these changes or erasures about which you have been testifying? A. It is possible for such a thing

to have been done by any man who had access to the books.

On cross-examination witness testified that he was not as familiar with the records and duties of the register's office as that officer. That he did not consider himself an expert in detecting different kinds of handwriting.

Witness's attention called to section 28, T. 61, R. 14, of tract-book, and asked to read the entry that appears in red ink. He reads—"Northeast of southeast of section 29, and northwest of southwest of section 28, T. 61, R. 14, 80 acres (under the purchase money) $7.00. John W. Link, October 29, 1870, 8106, H. act, May 20, 1862. Commuted, see cash receipt 41,487." That immediately above the following entry, in black ink: "E. ½ S. E. ¼, section 29, and northwest of southwest quarter of section 28, T. 61, R. 14, 120 acres, at $1.25 per acre, $150. Henry Cem, 1841, February 14, 22,827; see section 28–61–15." There appears the entry of Cavil M. Freeman in said section. And there appears in that section these two entries with notations or reference opposite each, and refers to different ranges in each of them. As Receiver he never had occasion to post the tract-book, plat-book or warrant abstract, and was not as familiar as the register with them. On re-examination in chief witness stated that he did not testify as an expert, but merely gave his judgment by looking at what was before him.

In the other cases referred to, in which reference is made to other or different ranges in posting, witness sees no erasures.

The deposition of Mr. A. C. Widdecombe was next read by defendant. He testified that his occupation was a lawyer; residence, Boonville, Mo.; age fifty years, and had resided in Boonville twenty-seven years. That plaintiff, Robert G. Hedrick,

was his father-in-law; that he became acquainted with him in 1862; that his relation as to plaintiff in this controversy is that of attorney for the plaintiff; that said relation commenced in August, 1885; that plaintiff is a book-keeper by occupation; residence, 409 E. Michigan street, Indianapolis, Ind.

Witness wrote the application and signed the applicant's name to same (by his initials as attorney), to purchase said land, which is invariably the practice in such cases; that he had the patent in his possession for the land in controversy, handed same to the stenographer for identification; that said patent had been mailed direct to the local office, or to witness, by the General Land Office, and witness sent it for record in Adair county. The patent is dated July 20, 1886, and was recorded 7th January, 1887. Plaintiff was not at the land office at the time he made his application to enter the land. He has been in Boonville. Do not know that he requested this specific entry to be made for him. Witness made the entry for him as he has made hundreds of others from time to time for non-residents desiring to purchase vacant lands.

Witness further testified that he professed to have a thorough knowledge concerning the disposal of the public lands. Have had a great deal of business before the land office the past twenty-five years as an attorney not only for parties in Missouri, but in many of the other states. That he has had some personal experience and is familiar with the records.

Q. State if the following entry appeared on the record at the time you made the application for Mr. Hedrick: "West half southeast quarter, section 28, township 61, range 14, 80 acres, Cavil M. Freeman, asignee of Thomas Huelkeld, 1856, July 25, millitary land warrant No. 8470, act 3rd March, 1852." A. I have no doubt that it did, with

the additional notation thereon "belongs to R. 17." —which means range 17.

Q. Examine the tract-book and state whether you did not find on the line, "Asignee of Cavil M. Freeman's entry," a perceptible erasure having been made where Cavil M. Freeman's name is written, and where "assignee of Thomas Huelkelk" is written, and also where the word "name" is written. A. There has been a perceptible erasure in the column "rate per acre," and "purchase money," and "name of purchaser," and in "number of receipt." There has been no erasure whatever in the numbers of the land, or the number of acres, but it looks as though there had been something erased prior to the name of "Cavil M. Freeman" being written thereon; and also in the column of "certificate of purchase," prior to the notation of the Freeman entry, there appears to have been an erasure, and that portion of the Freeman entry written afterwards over the erasure. There is no perceptible erasure where the words "land warrant No. 8470" is written, neither is there in the description of the land, nor the quantity. Never noticed before any indications of the erasure, and do so now by looking through a magnifying glass. Witness considers himself a pretty good expert in identifying handwriting. He cannot say that he knows in whose handwriting the words and figures "west half southeast quarter" is in. In his opinion as an expert, it is in the handwriting of the register at that time, J. Seaman, and also the figures "80." That the name "Cavil M. Freeman, assignee of Thomas Huelkeld," the figures "1856," are in the same handwriting. Witness states that everything connected with the posting "Cavil M. Freeman, assignee of Thomas Huelkeld," and the word "military," the shape of the letters by comparison with other entries made about the same

time, is undoubtedly, beyond a doubt, in the handwriting of register Seaman, and is the same.

Witness further testified that the first record he would examine to ascertain the status of a particular tract of land is the tract-book, and that the condition of the tract-book and entries about which he has been testifying appear the same now as at the time of entry by plaintiff, with the exception of the red-ink notation referring to 'Com. letter Feb. 15, 1887.''

After seeing the Freeman posting in range 14, and the reference to range 17, thereon, would turn to range 17, of the same book, and find as follows: ''West half southeast quarter of section 28, township 61, range 17 west, 80 acres, Cavil M. Freeman, assignee of Thomas Huelkeld, July 25, 1856, millitary land warrant No. 8470, act of 1855.'' That posting appears in the handwritiug of the register.

There also appears the following posting: ''Southeast quarter, section 28, township 61, range 17, 160 acres, Pitt Cook, assignee of James Long, 1857, May 21, M. L. warrant No. 7809, act March 3rd, 1855,'' and on the left hand, in the same line of the description, appears the words ''Cancelled, Com. letter, Jan. 12th, 1861.'' That letter was undoubtedly examined before the entry of Hedrick was made. Just above the last-mentioned entry appears the following: ''East half of southeast quarter of section 28, township 61, range 17, at $1.25, $100, William Vancleve, Sept. 19, 1885, patent, J. G. Vancleve, Macon, Mo., Sept. 11, 1886.''

Witness states that in his opinion the Pitt Cook location was posted prior to the Cavil M. Freeman location. The Freeman location is in the handwriting of Register Reiche. He was register from 1874 until 1886, and undoubtedly made said

posting prior to the Vancleve and Hedrick entries.

Q. Why should it be done prior to the Vancleve entry? A. For the reason that the southeast quarter appeared located by Pitt Cook, and when the Cavil M. Freeman location was posted it left the land entered by Vancleve vacant.

After the 12th day of January, 1861, the date of the cancellation of the Pitt Cook location, and prior to September 19, 1885, the date of the Vancleve entry, he, Vancleve, might have at any time entered the E. ½ of the S. E. ¼ of sect. 28, T. 61, R. 17, as he did, without any fears of conflict with a valid entry.

Q. Then that does not explain why the Cavil M. Freeman entry was undoubtedly posted before the Vancleve entry was made, does it? A. In my opinion it does. The notation, "Patent mailed J. G. Vancleve, Macon, Mo., September 11, 1886," is in Register Reiche's handwriting, and the posting of the E. ½ of S.E. ¼, or the Vancleve entry, in my opinion is in that of the receiver. After the posting of the entry by Register Reiche, there appears to be a pencil blurring or erasure, and it is possible it might have been the date of the posting. If it had been an official notation it would have been made in ink.

Q. Where would you have gone if that entry had been found in Range 17? A. I would have simply left it to the land officials. I did not examine any more, if they found it vacant.

Q. Would it have created suspicion in your mind that C. M. Freeman might have had a claim on the S.E. ¼ of section 28, T. 61, R. 17? A. No. On the contrary, the official letter of January 12, 1861, clearly stated that the southeast quarter in the name of Pitt Cook was cancelled for the reason of conflicting in part with the prior location of Cavil M. Freeman.

Record of monthly abstract of warrant locations handed witness, who identified the same, and testified there appears on said record the location of military warrant No. 8470, R. R. 1252½, the description, the west half southwest quarter, section 28, township 61, range 17; 80 acres; July 25, 1856, Cavil M. Freeman— "this was omitted on the register, hence the half number." The figures "17" in said description appear to be written over an erasure, which is very perceptible, and that the original notation is 14.

Q. State if as a prudent man and the facts you have seen here to-day would not have created a reasonable suspicion in your mind, as a practicing lawyer, that there might be some mistake in regard to the entry of this land, and that there might be some parties improperly claiming this land, thinking that they were the owners, and if from all you have seen on these records to-day it would not create a reasonable apprehension in your mind that Cavil M. Freeman might possibly have thought that he entered the west half of southeast quarter of section 28, T. 61, R. 14, instead of the west half of southeast quarter of section 28, T. 61, R. 17? A. I will state that on a thorough investigation, and the more I have investigated the more it convinces me, that Cavil M. Freeman undertook to defraud the Government out of eighty acres of land which he never entered. That is my opinion from my investigations.

Q. Would you not, as a prudent man, come to the conclusion that some innocent parties might be claiming this land at the time you made the entry? A. Not at all.

Witness stated he had been in Adair county prior to the entry of the land in controversy, but not in the vicinity of it. Knew something about

the lay of the country and the Wabash railroad. Did not examine the land.

Q. Did you enter this land without any idea of its value or where it laid, or anything about it? A. Yes. The fact of it being vacant public land induced me to introduce the entry of it. I never inquired about it, and will say about that country that persons here in town made entries which are now worth less than the government price. I did not know the character of the land. Persons do not have to go and look at public lands.

Witness stated he knew of no record in the office showing what lands had been certified to the various counties as having been entered. A person desiring to purchase a tract of public land would first make inquiry of the register if such tract was vacant, or ask to be permitted to examine the tract-book. The register would examine the record and would inform the party whether or not the land was vacant. If vacant, the party would then make a *written* application, giving the numbers or description, kind of entry desired to be made, and present that application to the register. The party would deposit the money, if a cash entry, with the receiver. The register would go to his register of certificates and take the current number, and give the application a number, and then post it on the tract-book; then go to the plat-book and write the current number of the application upon the tract sold. There are three records he makes of the same transaction. The register certifies the application over to the receiver. The receiver posts the sale on his register, giving the same current number, makes out a receipt, and also a duplicate receipt. He gives the purchaser or entryman the duplicate, and the original is sent to Washington with the monthly returns of the register and receiver.

If it is a warrant location the applicant fills out

a blank application, giving the numbers of the land, the size and act of the warrant, and the number of the warrant. He signs it, and his signature is witnessed by the register. He does not have to swear to it. The register issues what is called a "duplicate certificate of location," which is given to the party. The receiver has nothing to do with a warrant location but to accept the location fee, which is $1 for each 40 acres. *The application* in warrant locations accompanies the warrant to the general land office at Washington each month with the returns. Cash applications are retained in the local office.

Q. In case of military bounty land warrant, upon what does the patent issue? A. *Upon the party's application over his own signature*, and witnessed.

Q. State if Cavil M. Freeman, when he came to this office to enter the west half of the southeast quarter of section 28, T. 61, R. 14, if he might not have called for that particular land verbally on the tract and plat-book, and then when he made his application in writing, if that application might not have erroneously described the west half of the southeast quarter of section 28, T. 61, R. 17, instead of the west half of southeast quarter of section 28, T. 61, R. 14, and that all these entries being made, he intended to have entered in 14, but that his application was simply an error, and that they went to Washington, and the patent issued upon the erroneous application.

Objected to upon the part of plaintiff for the reason that cause for the happening of a train of events, or the probability or improbability and likelihood of an act which no man can know and about which nothing is shown nor the witness has no

knowledge of, would not be admitted by any court in the land.

A. If Cavil M. Freeman had made but the one entry as shown by the records, I would say it would be possible he might have done so. But Cavil M. Freeman, having made hundreds of warrant locations of thousands of acres of land for himself, as shown by the records, and as attorney for many other parties, I hardly think that a mistake of that kind could have occurred to Cavil M. Freeman.

Q. Do you know of any other explanation how this record could have been made by Seaman, the register at the time, as they appear to have been made? A. I will state my opinion, as follows: "Mr. Freeman's application, over his own signature and witnessed by the register at the time, clearly indicates his intention was to locate eighty acres in range 17, and that the said land was clearly vacant at the date of his location, July 25, 1856. On the abstract of warrant locations for that date, immediately preceding the entry of Freeman, there are four consecutive warrant locations in range 14, by different persons, and when the register posted the location of Freeman, these entries immediately preceding it being township 61, R. 14, he followed the figures immediately above the entry of Freeman, "14," when the application showed it to be 17. I have no doubt it was done on the day of the location, or at the end of the month. There is a law or regulation that the register and receiver carefully examine their records at the end of the month with the applications and see they are correct. I have no doubt that the alteration from 14 to 17 was made at the end of the month of July, 1856. The application signed by the party is used for each and every notation made upon the

a blank application, giving the numbers of the land, the size and act of the warrant, and the number of the warrant. He signs it, and his signature is witnessed by the register. He does not have to swear to it. The register issues what is called a "duplicate certificate of location," which is given to the party. The receiver has nothing to do with a warrant location but to accept the location fee, which is $1 for each 40 acres. *The application* in warrant locations accompanies the warrant to the general land office at Washington each month with the returns. Cash applications are retained in the local office.

Q. In case of military bounty land warrant, upon what does the patent issue? A. *Upon the party's application over his own signature*, and witnessed.

Q. State if Cavil M. Freeman, when he came to this office to enter the west half of the southeast quarter of section 28, T. 61, R. 14, if he might not have called for that particular land verbally on the tract and plat-book, and then when he made his application in writing, if that application might not have erroneously described the west half of the southeast quarter of section 28, T. 61, R. 17, instead of the west half of southeast quarter of section 28, T. 61, R. 14, and that all these entries being made, he intended to have entered in 14, but that his application was simply an error, and that they went to Washington, and the patent issued upon the erroneous application.

Objected to upon the part of plaintiff for the reason that cause for the happening of a train of events, or the probability or improbability and likelihood of an act which no man can know and about which nothing is shown nor the witness has no

knowledge of, would not be admitted by any court in the land.

A. If Cavil M. Freeman had made but the one entry as shown by the records, I would say it would be possible he might have done so. But Cavil M. Freeman, having made hundreds of warrant locations of thousands of acres of land for himself, as shown by the records, and as attorney for many other parties, I hardly think that a mistake of that kind could have occurred to Cavil M. Freeman.

Q. Do you know of any other explanation how this record could have been made by Seaman, the register at the time, as they appear to have been made? A. I will state my opinion, as follows: "Mr. Freeman's application, over his own signature and witnessed by the register at the time, clearly indicates his intention was to locate eighty acres in range 17, and that the said land was clearly vacant at the date of his location, July 25, 1856. On the abstract of warrant locations for that date, immediately preceding the entry of Freeman, there are four consecutive warrant locations in range 14, by different persons, and when the register posted the location of Freeman, these entries immediately preceding it being township 61, R. 14, he followed the figures immediately above the entry of Freeman, "14," when the application showed it to be 17. I have no doubt it was done on the day of the location, or at the end of the month. There is a law or regulation that the register and receiver carefully examine their records at the end of the month with the applications and see they are correct. I have no doubt that the alteration from 14 to 17 was made at the end of the month of July, 1856. The application signed by the party is used for each and every notation made upon the

records of the district land office, as well as that of the general land office.

Q State if that change was made in the monthly abstract book from 14 to 17, why it was not made in the tract-book at the same time, or do you think it was made at the same time in the tract-book? A. The record does not indicate it was made at the same time.

Q. You say the application was the basis for these records; why is it that it appears in the monthly abstract to have been 14 and changed to 17, and in the plat-book and tract-book to have been 14? A. It was undoubtedly a misposting by the register.

Witness testified he had not seen the original application. Had recently seen a certified copy of the original application, and it shows range 17. That he is satisfied that the misposting occurred as stated, from his own experience. That plaintiff has paid no taxes on the land in controversy. His money was paid for the land. That witness made the examination exclusively for paintiff, and his interest now is that of an attorney and a contingent fee.

Witness further testified that he would be governed by no records but the government records alone in advising a party in the purchase of government land.

Q. If you found evidence here of entry of so much land by a particular individual, but that his entry was not perfect and complete, and that you saw where there was an error in the application, or something that invalidates it, that you paid no attention to the rights and equities of the persons? A. This is not that kind of a case. Under that state of facts the register or receiver would not entertain the applicant's location. I could do nothing, if ever so much disposed to do something, to

make such an error under these state of facts. I never knew an instance where it was done.

Q. Was plaintiff's entry made before or after the commissioner of the General Land Office in 1887 wrote here to this office to cancel the Cavil M. Freeman entry? A. The record shows the dates of everything. The entry of plaintiff was based upon the letter of January 12, 1861.

Q. As an expert lawyer do you not know that after the land had passed out, when the rights of intervening citizens had come in; if you do not know that the land officials had nothing to do with it, after it had passed out of the hands of the Land department, did you not know that after the rights of parties intervene in this case, that the Land Department was not a court sufficient to pass upon it after a title was passed out of the Government? A. Any well-read lawyer will say that after the title has passed out of the Government it does not come under the jurisdiction of the Land Office.

Witness testified that the application of plaintiff to purchase the land in controversy was in his handwriting.

CROSS-EXAMINATION.

Q. You spoke in your testimony in regard to an erasure on page 73 of tract-book, where the name of Cavil M. Freeman appears; explain again what the record shows on that page in regard to that entry. A. The record shows there has been an erasure immediately under the name "Cavil M. Freeman."

Q. Then the record shows that there has been a notation made with reference to the west half of the southeast quarter, Section 28, T. 61, Range 14, prior to the notation or entry of Cavil M. Freeman? A. It would indicate that.

Q. If, therefore, anything was to be gath-

ered from the record, then it would be that there was a prior entry to Freeman's? A. Undoubtedly. I do not see how it could be otherwise.

Q. There is no change from Freeman to Hedrick made in that book, is there? A. Nothing at all to indicate it.

RE-EXAMINATION.

Q. There is no other name, so far as you know, that would correspond to land warrant No. 8470, except the name of Cavil M. Freeman. There is no appearance of any erasure so far as warrant 8470 is concerned, is there? A. No, sir.

William McCracken testified in his deposition that his residence was in Boonville, his age forty-three years, and present occupation register of United States Land Office, and has been such since December 10, 1890. That he succeeded Leland Wright, and the books show that Gustave Reiche was register prior to Mr. Wright.

Since morning, witness testified he had occasion to examine the tract-book and plat-book and abstract-book in the office with reference to entries of the west half of southeast quarter of Section 28, T. 61, R. 14. Witness was handed a paper marked "Exhibit A"—the cash application of R. G. Hedrick—and stated it was a copy of the original application; did not know in whose handwriting the original was written.

(Record, p. 85.)

Witness handed a paper marked "Exhibit B" and stated it was an abstract and certified copy of section 28, township 61, range 14 west, containing entries as shown by the tract-book of all entries made in that section.

(Record, p. 86.)

Witness was handed a paper marked "Exhibit C" and stated it was a tracing of section 28, township 61, range 14, a copy of the plat of that section. That it was not possible to trace all the

(Record, p. 87.)

marks that appeared on the west half of the southeast quarter of section 28, township 61, range 14. There appeared some figures that he could not tell what they were. There appeared a line drawn through some figures, and figures written over other figures on the west half of the southeast. There were some figures that were illegible, and he could not make out. That it appeared that some of the figures were made at different times. Could not say as to whether they were made by different persons or in different ink. Witness handed a paper marked "Exhibit D," and stated (Record, p. 88.) it was a certified copy of abstract of warrant location, act of March 3, 1855. This shows the "register and receiver's No. 1252½, warrant 8470, October 11, 1855, 80 acres, Thomas Huelkeld, west half of southeast section 28, township 61, range 17, 80 acres, July 25, 1856, Cavil M. Freemac. (This was omitted on the register, hence the half number.)" The figure 17 describing the range shows an erasure, the figure 17 inserted.

Paper marked "Exhibit E" handed witness, who testified it was a certified copy of commissioner's letter "C" of February 15, 1887. (Record, p. 87.)

Witness testified he had made a thorough search for the original application of Cavil M. Freeman, but failed to find it; that there was no other record in the office bearing upon this particular entry, further than range 17, which he had not examined; that he deemed it useless to make further search in his office for the original application of Freeman, and knew of no other record pertaining to it.

CROSS-EXAMINATION.

Witness' attention called to "Exhibit B" and (Record, p. 86.) states there appears to be double entries in said section besides the one for the land in controversy;

that he cannot say mispostings are frequent from his experience—he sees they occur.

Witness further testified that from the warrant abstract of act of 1855, Cavil M. Freeman, January 10 to July, 1856, made warrant locations R. and R. Nos. 1106, 1107, 1108, 1129, 1130, 1146, 1147, 1148, and 1152; also 1215, 1319, 1376, and 1372; 1333, 1333½, 1436, 1514, 1529, 1533, 1565 and 1570, 1571, 1572, 1573, 1574, and 1673. In the last numbered location there appears to be a change in the figures in the description of the range 17, township 64. The figures do not look alike. The figure 7 does not. It may have been made by the same party. Witness further testified the abstract showed Cavil M. Freeman to have made warrant locations R. R. Nos. 1696, 1697, 1698.

Witness' attention called to the condition and appearance of the record in the description of locations from No. 1379 to 1385 inclusive, and testified that as to the township and range, and number of acres, appear to have been changed; must have been eight changes there. In No. 1704 the description appears to have been changed as to the township.

In warrant location R. and R. No. 1247, William A. Lane appears of record as the attorney of the locator, and also in Nos. 1248 and 2071 to 2075, inclusive. In 2071 there is a change in the number of acres and the number of the warrant, and also in the date of 2072 and in the number of acres in 2073 and the number of warrant in 2074. William A. Lane appears to have been the attorney in all those cases.

Also in No. 2105 to 2123, inclusive, nearly the entire page, he, Lane, appears as the attorney of the locators. In 2128 there is a change in the name of the locator. In number 2273 there is an alteration in the number of acres, and also in the

number of the range from what it was originally. William A. Lane also appears as attorney for the locators in locations numbered 2560, 2561, 2577, and the three succeeding ones. In the last location there is an alteration in the description of the land. In number 2258 the date of location has been changed, the number of acres, the name of party to whom the warrant issued, and change in the description of the land, in the section and township, and, I believe, the range; and also the name of the locator, and an erasure under the head of remarks.

William A. Lane also appears as the attorney of the locators in locations numbered 1724, 1725, and also 1737 to 1740, both inclusive, and 1744, 1912 and 1937.

In location 1733 there appears an alteration in the number of the township; also in the location 1912, the number of township has been changed from 62 to 64.

Witness further testifies from the records just examined, of warrant locations made by Cavil M. Freeman, and by Cavil M. Freeman as attorney, and William A. Lane, attorney, and William A. Lane on his own part, said parties were extensive operators in the location of military land warrants, for themselves and others, for the years examined, between 1856 and 1857.

Witness identifies a paper marked "Exhibit F," and testifies that "Exhibit F" is a certified copy of the tract-book, of the west half of the southeast quarter of section 28, T. 61, R. 17; and also an entry in red ink of the southeast quarter of section 28, T. 61, R. 17; and also showing the east half of the southeast quarter of section 28, T. 61, R. 17, to William M. Vancleve. Witness stated that he did not know the handwriting in which the entries of Vancleve and Freeman were written.

(Record, p. 90.)

That he did not know in whose handwriting "belongs to range 17," in the Freeman location in range 14 was made.

On re-direct examination by defendant witness testified that A. C. Widdicombe appeared to be very well posted with the records of the office. That since witness has been register could not specify any particular business. He has been making abstracts for parties and counties. That the work required great familiarity with the records of the office to know how to do it.

(Record, p. 91.) Paper marked "Exhibit G," handed witness who identifies same as a description of section 28, T. 61, R. 17. That he made it by tracing on tracing linen on the plat, and it is exact with the record. That he does not know in whose handwriting the letters "M. L. W." and "8070, 1855," is in. It appears to be in newer writing and of later date than the words "Pitt Cook" in red ink.

CROSS-EXAMINED BY PLAINTIFF.

Witness identifies record shown him as the register of cash sales, and the first entry made thereon in the month of September, 1885, as that of Robert G. Hedrick, and posted in the handwriting of the register at that time, by comparison with other entries made at that time, and that handwriting and that on the plat-book is the same. The name of Gustave Reiche, as register, appears first on the records, July, 1874.

John J. Hoge being recalled in continuation of his deposition on the part of defendant, testified that he had before stated that the words "belongs to R. 17," on the extreme right of the entry, was in the handwriting of Mr. Reiche. Witness also stated that the posting in the tract-book in section 28, T 61, R. 17, of the entry of Cavil M. Freeman was in Mr. Reiche's handwriting. Witness iden-

tified "Exhibit G" as traced from the original plat-book, and testified he thought the letters and figures "M. L. Wt. 8470, 1855" were in the handwriting of Mr. Reiche, who was register from 1874 to 1885. On re-cross-examination, witness was shown paper marked "Exhibit H," and testified it was a copy of official letter of the commissioner of the general land office, dated January 12, 1861, and is a copy of the original letter to which the note on "Exhibit G," with reference to the south-east quarter, section 28, T. 61, R. 17, "Cancelled January 12, 1861," has reference.

Mr. Guthrie then offered in evidence and read Exhibits "B," "C" and "D," attached to the deposition of Wm. McCracken. (Record, p. 49.)

"Exhibit B" is a duly certified copy of all entries in section 28, T. 61, R. 14, as shown by the tract-book. (Record, p. 86.)

"Exhibit C" is a tracing of section 28, T. 61, R. 14, a copy of the plat of said section.

"Exhibit D" is a certified copy of the abstract of warrant locations, showing the location of warrant No. 8470, 80 acres, act of 1855, by Cavil M. Freeman, July 25, 1856, on the W. ½ of S. E. ¼, section 28, T. 61, R. 17. (Record, p. 88.)

The defendants thereupon rested.

In rebuttal, plaintiff offered evidence as follows: (Record, p. 50.)

"Exhibit E," being a duly certified copy of the certificate of location made with warrant No. 8470, for 80 acres, act of 1855, in favor of Cavil M. Freeman, under seal of the General Land Office dated April 20, 1891. Said exhibit is in words and figures as follows, towit:

Land Warrant } { Register and Receiver's
No. 8470. } { No. 1252½.

Land Office, Milan, Mo., July 25, 1856.

We hereby certify that the attached military bounty land warrant No. 8470 was on this day received at this office from Cavil M. Freeman, of Sullivan county, State of Missouri.

J. Seaman,
Register.

I, Cavil M. Freeman, of Sullivan county, State of Missouri, hereby locate the west half southeast quarter of section 28, in township 61, of range 17, in the district of lands subject to sale at the Land Office at Milan, Missouri, containing 80 acres, in satisfaction of the attached warrant 8470.

Witness my hand this 25th day of July, A. D. 1856. Cavil M. Freeman.

Attest: J. Seaman, Register.

We hereby certify that the above location is correct, being in accordance with law and instructions. J. Seaman,
Register.

Defendants objected to the introduction of said "Exhibit E," because it does not relate to the land in controversy, but it is eighteen miles away. It is not in 14; it is in 17. (Record, p. 50.)

By the COURT. It is in.

Plaintiff offered and read in evidence "Exhibit F." This is a certified copy of a portion of the tract-book belonging to the Land Office at Boonville, Mo., showing that Cavil M. Freeman located the west half of the southeast quarter of section 28,

township 61, range 17, with military warrant 8470, for 80 acres, act of 1855, July 25, 1856. (Record, p. 50.)

Plaintiff offered and read in evidence "Exhibit G." This is a certified copy of a portion of the abstract of military warrant locations, act of 1855, belonging to the Land Office at Boonville, showing that Cavil M. Freeman located the west half of southeast quarter of section 28, township 61, range 17, with warrant 8470, July 25, 1856. (Record, p. 50.)

Plaintiff offered and read in evidence "Exhibit H." This is a duly certified copy, under seal of the general land office, dated April 1, 1891, of the patent issued to Cavil M. Freeman for the west half of the southeast quarter of section 28, township 61, of range 17, in satisfaction of military bounty land warrant 8470, 80 acres, act of 1855, said patent being dated September 10, 1859. (Record, p. 51.)

Plaintiff also offered and read in evidence the following exhibits, to wit: "Exhibit I," which is a certified copy of official letter from the commissioner of the General Land Office, dated January 12, 1861, to the register and receiver at Boonville, Mo., as follows, to wit: (Record, p. 51.)

General Land Office, January 12, 1861.

Gentlemen: The location made at Milan, Missouri, May 21, 1857, by Pitt Cook, of Erie county, Ohio, upon the S. E. 1/4 of section 28, township 61, range 17, with land warrant No. 7709, for 160 acres, act of 1855, has been cancelled for the reason that the west half of southeast quarter of section 28, T. 61, R. 17, was located July 25th, 1856, with land warrant No. 8470, for 80 acres, act 1855.

You will make proper notes upon the books and plats of your office, referring to this letter by its date.

The duplicate certificate of location having been surrendered to this office by Pitt Cook, land warrant No. 7709 has been returned to him.

Very respectfully, your obdt. sevt.,

Jos. S. Wilson,
Commissioner.

Register and Receiver,
Boonville, Mo.

"Exhibit J." This is a certified copy of letter of the commissioner of the general land office, dated February 15, 1887, to the register and receiver at Boonville, Mo., in words and figures as follows, to wit: (Record, p. 670)

Department of the Interior,
General Land Office.
Washington, D. C., Feb. 15, 1887.

Register and Receiver,
Boonville, Mo.

Gentlemen: I am in receipt of your letter of January 27, 1887, stating that your records show that the west half of the southeast quarter of section 28, township 61, range 14, was located by Cavil M. Freeman, July 25, 1856, per warrant No. 8470, act 1855, and that you were "shown an abstract of title from the records of Adair county, Mo., a regular chain from the said Freeman to the present occupant of the land, Mr. James H. Saunders."

In reply you are informed that Cavil M. Freeman located the west half of the southeast quarter of section 28, township 61, range 17 W., July 25, 1856, per warrant No. 8470, 80 acres, act 1855, for which patent was issued September 10, 1859, and you will see that your records agree with the

above, as shown by the records and files in this office.

Very respectfully,
S. M. Stockslager,
Ass't Commissioner.

"Exhibit K." This is a duly certified copy, under seal of the General Land Office, dated April 21, 1801, of so much of the Milan, Mo., monthly abstract as relates to the location of warrant No. 8470, 80 acres, act 1855, made to the commissioner of the General Land Office by the register of the said Milan office, and shows that said warrant 8470 was located on the west half of southeast quarter of section 28,, T. 61, R. 17, by Cavil M. Freeman, July 25, 1856. (Record, p. 51.)

Said "Exhibit K" also included a duly certified copy of letter from the commissioner of the General Land Office, dated January 3, 1889, to A. C. Widdicombe, as follows, to wit: (Record, p. 52.)

Department of the Interior,
General Land Office.

Washington, D. C., January 3, 1889.

A. C. Widdicombe, Esq.,
Boonville, Mo.

Sir: In reply to your letter of the 24th ultimo, you are advised that the patent issued in the name of Cavil M. Freeman for the west half of southeast quarter, section 28, Tp. 61, R. 17 W., Mo., per his location of M. B. L. warrant No. 8470, for 80 acres, act of 1855, was transmitted to Messrs. Young and Niles, Washington, D. C., March 23, 1860, by whom the certificate of location was surrendered.

Very respectfully,
T. J. Anderson,
Ass't Commissioner.

Defendants objected to the last four, Exhibits "H," "I," "J," and "K," as being incompetent, immaterial, and irrelevant. (Record p. 52.)

A. C. Widdicombe was next sworn and examined on the part of plaintiff, and testified that his occupation was a lawyer, and had resided in Boonville, Mo., for twenty-six years; that he had practiced before the U. S. Land Office at Boonville, and had experience in the mode of entering land; that he made the application for the land in controversy for plaintiff Hedrick. It was made September 1, 1885. The land was subject to cash entry, homestead or pre-emption entry. That he examined the records prior to filing the application of Hedrick. The record first examined was the tract-book; it showed as follows (witness reads from defendant's "Exhibit B,"): West half of southeast quarter, section 28, T. 61, R. 14, 80 acres, Cavil M. Freeman, assignee of Thomas Huelkeld, July 25, 1856, military land warrant No. 8470, March 3, 1855; belongs to 17 R. That he next referred to the same record, in range 17, and found a similar notation, as follows: West half of southeast quarter, section 28, T. 61, R. 17, 80 acres, Cavil M. Freeman, assignee Thomas Huelkeld, July 25, 1856, military land warrant No. 8470, act 1855. That he next examined the southeast quarter of section 28, T. 61, R. 17, as tract-book shows 160 acres: Pitt Cook, assignee of Thomas Long, May 21, 1857, military warrant No. 7709, March, 1855. Noted on that entry is the following: Cancelled January 12, 1861. That he examined the files of the office for that reference—January 12, 1861—and examined the letter of that date from the General Land Office, a copy of which is in evidence, marked "Exhibit I." Witness then filed plaintiff's application for the land in controversy that appeared vacant in range 14; that he never had

seen the land, and knew nothing as to its condition or improvement; that plaintiff Hedrick is the father-in-law of witness, and resides in Indianapolis.

Q. What is the first step taken in entering land in the U. S. Land Office? A. If a party thinks a tract of land is vacant he fills up an application in writing, describing the land as the law prescribes, and signs same, either himself or by attorney. The application contains the numbers of the land, part of section, section, township and range —a full description.

Q. I'll ask you if you, at the time your deposition was taken in Boonville, examined, in connection with Mr. Park, the attorney for defendant, these books and records we have here in evidence? A. Yes.

Q. Did you notice any mutilations or erasures of the records as have been spoken of at that time? And, if so, tell what they are. A. I never noticed an obliteration or anything of the kind until my attention was called to it through the magnifying glass presented by Mr. Park. The only obliteration was the name "Freeman." There appeared to be an erasure under the name Freeman, and this was in the entry or posting of the land in controversy. I never noticed it until I saw it through the glass. It was apparently an erasure under the name "Freeman" and the name Freeman written over the erasure. The changes appeared to be in the handwriting of the register at that time. At the time the application of Hedrick was made the records were in the same condition, showed the same erasures and blurring they do now.

Q. Do you know who made these erasures, changes, or blurrings over these records? A. I do not.

Q. Was it done by you or at your instance or

at your request? A. It was not done by my request, at my instance, or to my knowledge.

Q. Did you ever occupy any position in the U. S. Land Office? A. Never.

Q. Your connection has always been as an attorney? A. Yes, sir; always. I will state that these mispostings often occur. Previous to every notation on a book or record of the Land Office is the application of the party. If the register makes a mistake in posting an entry, at the end of the month when he goes to make up his returns he is bound to discover where it ought to be. He changes it and puts it in the right place. That is all he can do. The date of the Hedrick entry was September 1, 1885.

On cross-examination Mr. Widdecombe testified that he had ascertained from his long experience in the examination of the records of the Land Office at Boonville, that there mispostings are quite frequent, and that he had taken notice of that fact at the time he made this application for plaintiff, and that at that time he saw the notation on the tract-book, that the land in range 17, had been entered by Cavil M. Freeman. At that time the red ink notation that now appears on that book was not there. He then looked over to range 17, that the words "belongs to R. 17" is not in the same handwriting as the balance of notation, but of a later date, and in the handwriting of Mr. Reiche, a former register, and that the balance of the notation was, I think in the handwriting of Mr. Seaman, register of the Land Office in 1856. Mr. Reiche was in that office eight years, going out in 1886, and was succeeded by Mr. Wright. Witness does not know when Mr. Reiche made that notation, but the erasures on that book as they now exist undoubtedly appeared there at the time he made the application for plaintiff's entry just as

they are now. That the records are in the same condition to day as when the Hedrick entry was made. And he then knew the condition of the records. Witness further testified on cross-examination, that at the time he made this application that he did not know anything about this land, but had been over the country, up and down the Wabash railroad. That he invested the plaintiff's money in this land because it appeared vacant and he believed it to be worth the government price. That most any in this county is worth the government price. That he had understood from Mr. Park after the entry was made that this land was not very valuable.

(Record, p. 86.) That "Exhibit B," shown to witness, he has no doubt is a correct exemplification of the book, as it appeared at the time the Hedrick application was made, except the Hedrick entry was not on it at that time, and that he is satisfied that at the time he made said application he examined the record of section 28, township 61, range 17. Witness is shown an exemplification (Exhibit F.) in which is (Record, p. 90) the word "cancelled." Witness has no recollection how that word was written in 1885, when he made Hedrick's application, nor whether that entry had lines running through it at that time, but he has no doubt it had. He thinks the Pitt Cook entry was written in red ink, and it was cancelled with pencil lines, and that the entry preceding the Cook entry was a cash entry, and they are always made in black ink. That the Van Cleve entry was not there at the time the Hedrick entry was made. That he does not remember that the Cavil M. Freeman entry was in existence when he made the Hedrick application. Witness is shown plaintiff's "Exhibit G" and defendant's "Exhibit D" and (Record, p. 91) states that the exemplification of the 26th of December, resembles more closely the original than

plaintiff's of December 11th. That he visited the defendants, Wilson and Saunders, in May, 1887, in company with Mr. Park, and saw that the railroad was being built through the land. That he searched the Land Office for everything relating to this land, and the letter of January 12, 1861, was all that he found authorizing any change. That if the alteration was made in 1866, that letter would be where it is now. That he found no evidence that the notation "belongs to R. 17" was put there prior to the time of Reiche. That this letter of January 12, 1861, would go into the files of the office, and remain there unless some one called for it. That this notation called for that letter, and the register hunted it up at request of witness.

Defendants then recalled Mr. Park in rebuttal, who testified as follows:

It is my impression that in my visits to Boonville, in January, 1887, I examined the tract-book for the W. ½ of S. E. ¼ of Section 28, Township 61, Range 17, and that the tract-book appeared the same as shown by defendant's "Exhibit F" attached to McCracken's deposition. I don't remember positively what entries appeared on the tract-book relating to Section 28, Township 61, Range 17, January 7, 1887. The Pitt Cook entry was there at that time, and the plat-book show the Pitt Cook entry for the north half of the south half of Section 28. The Pitt Cook entry was in pale red ink. Don't recollect what kind of writing the word "cancelled" on the margin of the record was in, and don't remember whether the Vancleve entry was there in 1887, but thinks it was; that he examined it while there in December last and it compared in color, freshness, age and handwriting with the Freeman entry. The date of the Vancleve entry was September 19, 1885, and that of

the Freeman entry July, 1856. That he examined the tract-book when he went there in December last, and "Exhibit G" is a correct exemplification as he saw it last December. That he remembered that the Pitt Cook entry was written in pale red ink just as it is now.

Defendants then offered and read in evidence defendants' "Exhibit F" relating to Section 28, T. 61, R. 17, and defendant's "Exhibit G" being a copy of the plat-book of Section 28, T. 61, R. 17, and also the plat-book of Adair county relating to Section 28, T. 61, R. 14, showing the west half of southeast quarter of Section 28, as follows: "Cavil M. Freeman, July 25, 1856." Defendants also offered and read in evidence a duly certified copy of the military bounty land warrant No. 8470, for 80 acres, Act of 3d of March, 1855, to Thomas Huelkeld, private, Capt. Redding's Company, War of 1812. (Record, p. 60.)

This was all the testimony in the case.

ASSIGNMENT OF ERRORS.

Now comes the plaintiff in error and assigns the following errors appearing of record herein:

I.

The Supreme Court of the State of Missouri erred in affirming the judgment of the Circuit Court of Adair County against plaintiff in error, holding that the equitable title to the land in controversy passed to Cavil M. Freeman under the proceedings had by him for the location of military bounty land warrant No. 8470 for 80 acres, act of 3d March, 1855, issued by the United States to Thomas Huelkeld, and the said Supreme Court of Missouri erred in not reversing said judgment and decree of said Adair County Circuit Court against plaintiff in error and rendering judgment in his favor for the possession of the premises in controversy, or reversing said judgment and remanding said cause to said Adair County Circuit Court with directions to render judgment therein against defendants and in favor of plaintiff in error.

II. In holding that the entry of the land in controversy by the plaintiff, and the issue to him of a patent therefor, did not vest in him, under the laws of the United States, the full legal and equitable title to said land.

III. In holding that the patent of the United States issued to the plaintiff for said land vested the

legal title thereto in him in trust for the defendants or those claiming under them.

IV. In holding that there was, at the date of the entry of the plaintiff, any impediment against the acquisition of a complete and valid title to the tract in question by any person applying therefor under the laws of the United States.

V. In not holding that the patent of the United States, issued to the plaintiff pursuant to his entry, vested in him, under the laws of the United States, the full title, legal and equitable, to the land in said patent mentioned and described.

VI. In holding that the plaintiff, in applying to make his entry, was chargeable with notice that, in the application and *original* certificate to locate Warrant No. 8470, of Cavil M. Freeman to locate other land, a mistake had been made, and that said Freeman intended to enter and did enter the land in controversy, notwithstanding the fact that the United States had issued to said Freeman a patent for the land HE DID ACTUALLY and LAWFULLY apply for in satisfaction of his said warrant, and he accepted same, and for which said land Freeman has an undisputed right and title under said patent issued to him therefor.

VII. In not giving judgment in favor of the plaintiff for the possession of the land in controversy.

And the Circuit Court of Adair county in rendering judgment in this action against plaintiff in error, committed error, and the plaintiff in error assigns the following specification of the errors relied upon committed by said court as follows:

I. In holding that the equitable title to the land here in controversy passed to Cavil M. Freeman under the proceedings had by him for the location of land warrant No. 8470, 80 acres, act of 1855, issued by the United States to Thomas Huelkeld.

II. In holding that the entry of the land in controversy by the plaintiff, and the issue to him of a patent therefor, did not vest in him, under the laws of the United States, the full legal and equitable title to said land.

III. In holding that the patent of the United States issued to the plaintiff for said land vested the legal title thereto in him in trust for the defendants or those claiming under them.

IV. In holding that there was, at the date of the entry of the plaintiff, any impediment against the acquisition of a complete and valid title to the tract in question by any person applying therefor under the laws of the United States.

V. In not holding that the patent of the United States, issued to the plaintiff pursuant to his entry, vested in him, under the laws of the United States, the full title, legal and equitable, to the land in said patent mentioned and described.

VI. In holding that the plaintiff, in applying to make his entry, was chargeable with notice that, in the application and *original* certificate to locate Warrant No. 8470, of Cavil M. Freeman to locate other land, a mistake had been made, and that said Freeman intended to enter and did enter the land in controversy, notwithstanding the fact that the United States had issued to said Freeman a patent for the land HE DID ACTUALLY and LAWFULLY apply for in satisfaction of his said warrant,

and he accepted same, and for which said land Freeman has an undisputed right and title under said patent issued to him therefor.

VII. In not giving judgment in favor of the plaintiff for the possession of the land in controversy.

Wherefore, and for divers other errors appearing herein, plaintiff in error prays that the judgment and decree of the Adair County Circuit Court herein, and of the Supreme court of Missouri, affirming the same, be reversed and annulled and for naught held, and that the court render and enter judgment herein in favor of plaintiff in error, and against defendants in error for possession of the premises in controversy, rents and profits by way of damages and for costs in this behalf laid out and expended.

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Attorneys for Plaintiff in Error.

BRIEF AND ARGUMENT.

Points of Fact.

The uncontradicted competent and legal evidence in this case, preserved and shown in the printed record, establishes the following propositions of fact:

I.

That the west half of the southeast quarter of section 28, township 61, range 14, was a part of the public lands of the United States, subject to entry at the Milan, Missouri, District Land Office in the state of Missouri. That the west half of the southeast quarter of section 28, township 61, range 17, was also a part of the public domain subject alike to entry in the same land district.

II.

That on the 25th day of July, 1856, Cavil M. Freeman, of Sullivan county, Missouri, located, by his application in writing and signed by him, the west half of the southeast quarter of section 28, in township 61, range 17, in the district of lands subject to sale at the Land Office at Milan, Missouri, containing eighty acres, in satisfaction of military

bounty land warrant No. 8470, for 80 acres, act of March 3, 1855, issued to Thomas Huelkeld, private, Capt. Redding's company, war of 1812, and surrendered said land warrant to the register at the time of said location. Register and receiver's number, 1252½. And that this location of this warrant on this tract of land was duly transmitted by said register to the commissioner of the General Land Office in his monthly abstract. That on the same day the register issued his duplicate certificate of location under his hand, stating that military land warrant No. 8470 had that day been located by Cavil M. Freeman, upon the west half of southeast quarter of section 28, township 61, range 14.

That this certificate of location was surrendered to the General Land office, and a patent issued in the name of Cavil M. Freeman for the west half of the southeast quarter of section 28, in township 61, of range 17 west, as per his location, and in satisfaction of said military land warrant 8470 for 80 acres, said patent being dated September 10, 1859, and said patent was duly recorded in the General Land Office at Washington, D. C., and was transmitted to Young & Niles, Washington, D. C., March 23, 1860, by whom said certificate of location was surrendered.

III.

That the register of the Land Office, at Milan, Missouri, at the time of said location of said warrant, made a notation on the tract book in his office

of the location of said millitary land warrant 8470, showing the location of said warrant on the west half of the southeast quarter of section 28, township 61, of range 14, in the name of Cavil M. Freeman.

IV.

That afterwards, on May 21, 1857, Pitt Cook, of Erie county, Pa., located military land warrant 7709, act 3 March, 1855, for 160 acres, upon the southeast quarter of said section 28, township 61, range 17, and that the register of the Land Office made a notation on the tract-book, in his office, of said location. That afterwards, on the 12th day of January, 1861, by direction of the commissioner of the General Land Office, said location was cancelled, for the reason that the west half of the southeast quarter of said section 28, township 61, range 17, was located July 25, 1856, with land warrant number 8470, for 80 acres, act of 3rd March, 1855. And the commissioner of the General Land Office transmitted to the register and receiver at Boonville, Missouri, his official letter of that date, notifying them of such cancellation and directing them to make the proper notes upon the books and plats of their office, referring to said letter by its date. And the register of said Land Office, after the receipt of that letter and before the entry of plaintiff in error of said west half of the southeast quarter of section 28, township 61, range 14, duly marked on the tract and plat-book of said section 28, township 61, range 17, in his

office, the cancellation of said location referring to said letter by its date, and noted on the said tract-book and plat-book, the location of said military land warrant 8470 on the west half of the southeast quarter of section 28, township 61, RANGE 17, and also corrected the erroneous notation on the tract-book of the location of said warrant 8470 on said west half of the southeast quarter of section 28, township 61, RANGE 14, by adding to and writing thereon "BELONGS TO R. 17."

V.

That on the first day of September, 1885, plaintiff in error, Robert G. Hedrick, of Marion county, Indiana, by his application in writing, and signed by him, entered said west half of the southeast quarter of section 28, township 61, RANGE 14, 80 acres, in the district of lands, subject to sale at Boonville, Missouri, and received a certificate of purchase of the register of the Land Office, No. 42621, and thereafter surrendered said certificate and received a patent from the United States for said west half of southeast quarter of section 28, in township 61, of range 14, dated July 20, 1886, and that said patent was duly recorded in the General Land Office at Washington, D. C., and on the seventh day of January, 1887, in the office of the recorder of deeds of Adair county, Missouri.

VI.

That at and prior to the entry of plaintiff in

error on this 80-acre tract of land in controversy, there had been no previous entry or location by any person on said tract, and that at the time of said entry, September 1st, 1885, said tract of land was a part of the public domain of the United States, subject to entry by plaintiff in error.

VII.

That there is no evidence in this record, showing or tending to show that Cavil M. Freeman, the grantor of defendants in error ever entered or located, or attempted to enter or locate, or intended to enter or locate said tract of land, or that plaintiff in error, or his attorney who made his said entry had any knowledge of any such attempted or intended location of said land by said Cavil M. Freeman.

There is no evidence showing or tending to show that said Cavil M. Freeman, ever claimed to have located the tract of land in controversy with his military land warrant 8470, but on the contrary the evidence shows that said Freeman located said warrant on the west half of the southeast quarter of section 28, township 61, range 17, and received and accepted from the United States a patent therefor.

VIII.

That defendants in error are in possession of the premises sued for, claiming adversely to plaintiff in error, and that the value of the rents and profits is fifteen dollars per annum.

Points of Law.

On these facts, plaintiff in error affirms the following propositions of law, as decisive of this controversy in favor of the validity of his legal and equitable title to the land in controversy, and against the alleged equities in favor of defendants in error thereto, as shown by the erroneous judgment and decree of the Circuit Court of Adair County and its affirmance by the Supreme Court of Missouri.

I.

That the location of military bounty land warrant, 8470, by Cavil M. Freeman, July 25, 1856, on the west half of the southeast quarter of section 28, township 61, range 17, and the issue to him of a duplicate certificate of location by the register of the Land Office for the land in controversy, situated in a different section, township and range, and the notation thereof by said register on the tract-book and plat-book in his office, did not create or vest in said Freeman any right or title, legal or equitable, to the land in controversy.

II.

That the entry of the land in controversy by

plaintiff in error, and the issue to him of a patent therefor, vested in him, under the laws of the United States, the full legal and equitable title to said land.

III.

That plaintiff in error is entitled to judgment in his favor, for the recovery of possession of said premises as against the defendants in error, and for damages and costs.

We will consider the foregoing propositions of law in the order herein presented:

1. By the laws of the United States and the regulations of the General Land Office in force at the time of the location of military bounty land warrant, 8470, by Cavil M. Freeman, July 25, 1856, the location of said warrant must be accompanied by a written application to locate, containing a description of the tract desired, and signed by the locator or his attorney in fact.

"Every person making application at any of the Land Offices of the United States for the purchase at private sale of a tract of land, shall produce to the register a memorandum in writing, describing the tract, which he shall enter by the proper number of the section, half section, quarter section, half quarter section, or quarter-quarter section, as the case may be, and of the township and range, subscribing his name thereto, which memorandum the register shall file and preserve in his office." Act of Feb. 24, 1810, 2 Stats. 556, Sec. 2355. Rev. S. U. S.

That by act of March 3, 1855, chapt. 207, p. 702, 10 Stat. at large, 702, military bounty land warrants issued under the provisions of that act, may be located on any of the public lands subject to sale at either the minimum or lower graduated prices, and by section 4, may be located according to provisions of existing laws regulating the location of bounty land warrants.

And where lands are entered by a military warrant and everything has been done by the locator required of him, by law, he is entitled to a patent therefor. No price is payable. The land is seggregated from the public domain and is subject to private ownership, and all the incidents and liabilities thereof. *Wirth v. Branson*, 98 U. S. 121.

It is clear therefore that the location of military bounty land warrant, 8470, by Cavil M. Freeman, on the west half of sout'h east quarter, of section 28, township 61, range 17, seggregated that 80 acre tract from the public domain, and vested the title thereto, so far as the government is concerned, in Cavil M. Freeman, the same as if a patent had then actually issued.

Barney v. Dolph, 97 U. S. pp. 656-7-8.
Stark v. Starrs, 6 Wall. 402.
Carroll v. Stafford, 3 How. 441.
Simmons v. Wagner, 101, U. S. 260.

The fact that there was an error in the description of the land in the duplicate certificate of location delivered to Freeman by the register at the

time of said location, did not impair or change the legal effect of the location itself. The certificate connected the warrant located by Freeman and described in said duplicate certificate with the land actually located by said warrant, and not with the land erroneously described in said duplicate certificate.

Gilbert v. Trumble, 14 Ohio, 343.
Douglass v. Scott, 5 Ohio 194;
Bonner v. Ware, Wilcox (O.), 468;
Bush v. Ware, 15 Pet. 110 115;
Urket v. Coryell, 5 Watts & S. (Pa.) 60;
Fisher v. Fields, 10 Johns 495;
Partridge v. Smith, 2 Bissell (C. C.) 183.

That this was the necessary legal result and legal effect of the location of this military bounty land warrant is shown by the action of the Land Department concerning the land so located.

The application in writing by Freeman to locate said warrant on the west half of southeast quarter of section 28, township 61, range 17, in satisfaction thereof, was certified by the then register as correct, being in accordance with law and instructions. It was reported to the commissioner of the General Land Office by the register in his monthly abstract of warrant locations for July, 1856, with said warrant and application.

By reason of the erroneous notation of the location on the record in the register's office, as being made in range 14, instead of range 17, the land so located appeared on the register's books

as vacant public land. And afterward in May, 1857, a location thereon by Pitt Cook, of Erie county, Ohio, was made with a land warrant. When this latter attempted location was reported by the register to the General Land Office, and Pitt Cook applied for his patent therefor, *his location was cancelled "for the reason that said west half of southeast quarter of section 28, T. 61, R. 17, was located July 25, 1856, with land warrant 8470, for 80 acres. Act of 1855."* And the register and receiver at the Land Office at Boonville, Missouri, were directed to make proper notes of said cancellation on the books and plats in their office. And that "The Duplicate Certificate of location having been surrendered at this office by Pitt Cook, land warrant No. 7709 has been returned to him." Further than this when the duplicate certificate of location issued to Freeman of this land warrant 8470, containing the erroneous description of the land located, was surrendered to the General Land Office by Freeman's attorneys, the patent issued in the name of Freeman for the west half of the southeast quarter of section 28, Tp. 61, R. 17, the land described in the location, and not for the land described in the duplicate certificate.

This shows conclusively that the title to the public lands of the United States, based upon location of military bounty land warrants, is acquired by the locator by virtue of his written application for location of said warrant, and not by the dupli-

cate certificate of location issued to him by the register.

If there was an error in the entry, by a mistake of the true numbers of the tract intended to be entered, the locator, or, in case of his death, his legal representatives, not being assignees or transferees, may have that mistake corrected by proper application to the General Land Office, either before or after the issue of patent. And the location may be transferred from the tract erroneously entered to that intended to have been entered, if unsold.

The law in force at the time of this entry is to be found in sections 2369 to 2372 inclusive of the Rev. Stat. U. S.

Section 2369 being a reinactment of act of March 3rd, 1819 (3 Stat. U. S. 526). Section 2370 a reinactment of act of May 24th, 1828 (4 Stat. U. S. 301), and 2372 a reinactment of act of May 24th, 1824 (4 Stat. U. S. 31).

We desire to call the special attention of the court to the fact that the law last referred to restricts the change of entry to the locator and his legal representatives, and does not extend to assignees or transferees of the locator, and is upon condition that the party concerned surrenders his patent to the commissioner of the General Land Office, with a relinquishment of title thereto, executed in form to be prescribed by the Secretary of the Interior.

In this location of Freeman, nothing was ever done by him as required by law to secure any

change of entry. He surrendered the duplicate certificate of location, not for a change of entry, but for a patent. The patent is issued, recorded and delivered. That patent has never been surrendered. On the contrary, it is retained, and remains from the date of its issue up to the time of the entry and patent to plaintiff in error for the land in controversy, and of the trial and judgment in this case, an outstanding legal title in Freeman, as against the United States of the land located with the warrant by said Freeman. The patent issued to the plaintiff in error, July 20, 1886, on a valid entry made September 1, 1885, at a time when the records of the General Land Office, and of the Local Land Office at Boonville, showed the location and patent for the west half of southeast quarter section 28, township 61, of range 17 to be in the name of Cavil M. Freeman, based on the military land warrant 8470, and said records also showed that the land in controversy, the west half of southeast quarter section 28, township 61, range 14, was vacant public land of the United States, never seggregated from the public domain, and subject to private entry or location.

On this state of fact, of law, and of record, it is difficult to comprehend the equity claimed by defendants in error for said Freeman, and recognized by the court below in its decree, of ownership in the land in controversy, or any pledge of the public faith to him for said land, or any location thereof which would give him any right in the premises, legal or equitable, as against the United States as

the paramount owner, or plaintiff in error as its grantee. But, even if it should be conceded, for the purposes of argument on this point, that by some undefined and shadowy equity hitherto unknown or unrecognized by the United States or by the courts, Freeman had the right to have the title passing to plaintiff in error by his patent to the land in controversy vested in said Freeman, we cannot conceive how it is possible under the express provisions and restrictions of the laws of the United States concerning errors or mistakes, and changes of entries and locations on the public lands of the United States, that defendants in error, the Railway Company, Saunders and Wilson, obtained or acquired any right to assert such equity, if it be such, in Freeman in their own behalf to defend their possession of the premises in controversy against the legal right, title and claim of plaintiff in error. They or either of them are neither the locator, nor his legal representatives, but are his assignees and transferees of a tract of land, different in description and situation from the tract of land actually located and patented to Freeman, and by the express provisions of the statutes cited, they are precluded from any benefit to be derived from any error or mistake in the location or the patent issued thereon.

None of the cases cited by defendants in error in their brief and argument when this case was before the Supreme Court of Missouri, for final hearing, or by the Supreme Court in its opinion affirming the judgment and decree of the court below

sustain the position asserted by that court in this case.

The court in its opinion says: "Again, Freeman complied with all the terms and conditions necessary to entitle him to a patent to the tract of land in controversy; having done so, he acquired a vested interest therein, and became the equitable owner thereof, and, while his entry or location remains in full force, his rights in the premises can not be defeated by the issuance to another party of a patent to the same tract. The public faith has become pledged to the prior party, and any subsequent grant of the same tract to another party is void, unless the first location be vacated." Citing *Wirth v. Branson*, 98 U. S. 118; *Branson v. Wirth*, 17 Wall. 32; *Moore v. Robbins*, 96 U. S. 530; *Stark v. Starrs*, 6 Wall. 402. "And the fact that a patent was issued to Freeman for a different tract of land, can not effect or defeat his right to the premises in dispute." *Worth v. Branson, supra.*

The case of *Wirth v. Branson* was an action of ejectment brought by Wirth against Branson, in the Circuit Court of the United States for the Southern District of Illinois, for the recovery of the *northeast quarter* of Section 18, T. 4, north, R. 2, east, in Fulton county, Illinois. Plaintiff showed title under a patent from the United States, dated in February, 1868. The defence, among other things, was an outstanding title, on the ground that the land in controversy, as shown by the records of the Land Office in evidence, had been granted by the

United States to Giles Egerton, in January, 1818, on a location of a military bounty land warrant on and upon the land in controversy by said Egerton, which location was not shown to be vacated or set aside; and therefore said land was subject to entry by a grant to Leonard in 1868. And it also appeared in evidence in that case that the patent issued to Egerton on that location of his warrant was for the *southeast* quarter of said Section 18, instead of the *northeast* quarter in controversy. It further appeared that on the margin of the exemplified copy of that patent in evidence, was written a memorandum without date, that the patent was issued for the southeast quarter instead of the northeast quarter as recorded. It further appeared that the said southeast quarter of section 18, had been patented by the United States to one James Durney, January 7, 1818, three days prior to the date of Egerton's patent, referring to another land warrant as the basis of the grant.

On this state of facts the court below held, and this court affirmed the judgment, that by the location of the land warrant of Egerton upon the land in controversy, not shown to be vacated or set aside, the land was not subject to entry by, or grant to Leonard, and gave judgment for defendant. This court, in is opininion, says: "The land in question was shown to have been located in his (Egerton's) favor in due form, under a regular military land warrant, and no attempt was made to show that this location was ever vacated or set aside. Whilst it was in force no other could law-

fully be made on the same land. A subsequent location, though followed by a patent, would be void. Everything was done which was required to be done to entitle Egerton to a patent for the land. Being for military bounty, no price was payable therefor. The land became seggretated from the public domain, and subject to private ownership and all the incidents and liabilities thereof. The rule is well settled by a long course of decisions, that when public lands have been surveyed and placed in the market or otherwise opened to private acquisition, *a person who complies with all the requisites* necessary to entitle him to a patent in a particular lot or tract is to be regarded as the equitable owner thereof, and the land is no longer open to location. The public faith has become pledged to him, and any subsequent grant of the same land to another party is void unless the first location or entry be vacated or set aside."

In the case at bar, the undisputed facts in evidence show that Cavil M. Freeman never located the land warrant 8470 on the land in controversy, or complied with any of the requisites necessary to entitle him to a patent therefor. On the contrary, the undisputed facts in the case are that his said land warrant was located, in due form, and in compliance with *all* the necessary requisites to entitle him to a patent for the west half of southeast quarter of section 28, Tp. 61, *range 17*, and that a patent duly issued to him therefor, referring to said land warrant 8470 as the basis of the grant. This location of Freeman remained in full force and

was never vacated or set aside, and after the issue of patent to him in 1859, he became the equitable and legal owner of the land described in his location and patent. The case of *Wirth v. Branson*, *supra*, is authority for this proposition, but it is no authority for the position assumed by the Supreme Court of Missouri in its opinion in this case, that Freeman, by such location, complied with all the terms and conditions necessary to entitle him to a patent for the tract of land in controversy; that he acquired a vested interest therein and became the equitable owner thereof, and that his rights in the premises could not be defeated by the issuance to another party of a patent to the same tract.

The case of *Moore v. Robbins*, 96 U. S., 530, is no authority against plaintiff in error. In that case it appeared that the land in controversy was sold at public sale November 15, 1855, Moore purchasing one forty-acre tract and Mitchell the other. Both purchasers paid the purchase money and received the usual certificate of purchase. The patent for the land purchased by Moore, issued to him. No patent had issued for the land bought by Mitchell. The right of Moore and Mitchell to the land so purchased was contested before the register and receiver by Bunn, who set up a prior pre-emption right. Bunn claimed that his settlement on these two tracts began on November 8th, 1855, seven days before the sale. He filed his application with the register and receiver for a pre-emption right, on the 20th day of February, 1856, more than three months after the purchase by Mitchell

and Moore. The register and receiver accepted his money and granted him certificate of purchase. In a contest between Bunn on the one part, and Moore and Mitchell on the other, as to whether Bunn had made the necessary settlement, it was decided by the register and receiver in favor of Bunn, which on appeal to the commissioner of the General Land Office was reversed, and on appeal this decision of the commissioner was reversed by the Secretary of the Interior, who decided in favor of Bunn. The Supreme Court of Illinois, in their opinion in this case, held that the final decision of the secretary was conclusive of the rights of the parties, but this court held, on error to the Supreme Court of Illinois, that the lands in controversy were subject to public sale at the time Moore and Mitchell bought them; that the sale so made by law was a valid sale, vesting in them the equitable title with the right to receive the patents.

That since Bunn had failed to make proof of payment and file the affidavit of settlement required, before the commencement of the sale at which Moore and Mitchell bought, the subsequent proceedings of Bunn to enter the land as a pre-emptor were unlawful and void. That, under the law then in force, no preemption claim was of any avail to withdraw the land from sale at public auction, or as against a purchaser at such sale, unless the claimant had proved up his settlement and also paid or offered to pay the price before the sale had commenced. This case of *Moore v. Robbins* is strong authority for the position asserted by us, that a claimant for

public lands of the United States does not acquire any equitable title to such land unless he complies or attempts to comply with the requirements of the law upon which his claims is based. It is no authority to sustain the Supreme Court of Missouri, in its position, that an equitable title to one tract of land can be acquired by an entry or location upon another or different tract of land. In the case of *Moore v. Robbins*, Bunn made his settlement on the land in controversy in that case, but neither filed his application nor paid his money therefor before the sale to Moore and Mitchell. On this state of facts the court adjudged that Bunn had no equities against Moore and Mitchell, or their grantees, who had acquired the land from the United States by a valid sale.

In the case at bar, Freeman never made any *application*, as required by law, to locate his warrant on the land in controversy in this case, but made such application to locate said warrant on another tract of land. He received a duplicate certificate of location for the tract of land in controversy. This may have been the result of a mistake, either on the part of Freeman in making his application, or on the part of the register in granting him the certificate. If the mistake was that of the register it was wholly immaterial, because in law and in fact the equitable title passes by the location, and the legal title passes by the patent based on the warrant and location. If the mistake was that of Freeman, in stating in his application a description of the land different from that actually

intended by him to be located with his warrant, then the law pointed out the method and prescribed the condition by which that mistake could be corrected. The mere inadvertent marking on the books of the local office could in no sense be regarded as a disposal of the land. No one was seeking its ownership, consequently there was no one to whom disposal could be made.

The noting upon tract-book and plat-book of the Local Land Office that the land in controversy had been located by Freeman did not alter the fact of its non-location Such marking was an inadvertence which did not change the status of the land. It did not seggregate it from the public domain.

Eddy v. University of Illinois, 14 L. D. 50.

And since Freeman never made any location of his warrant on the land in controversy, and never complied with any of the requirements of the law necessary to be observed to secure a change of said location, from the land actually and legally acquired by such location, to the land in controversy, under the authority of *Moore v. Robbins*, *supra*, Freeman never acquired any vested interest in the land in controversy, and never became the equitable owner thereof. And the Supreme Court of Missouri misapplies and misconstrues that case in citing it as authority in this controversy.

The case of *Stark v. Starrs*, 6 Wall., 402, was a suit in equity to quiet title. Both parties claimed title under patents of the United States.

The patent of the plaintiff, bearing date December 7, 1860, under the Town Site Act of Congress, May 23, 1844, and defendant's December 8, 1860, under the Donation Act of September 27, 1850. The defendant complied with the provisions of that act, and the regulations of the General Land Office to carry that act into effect, by giving to the surveyor general, notice of the tract claimed by him and proving to the satisfaction of the surveyor general, settlement and cultivation of the tract within and for the time required by the provisions of the act. Thereupon the surveyor general issued the required certificate, setting forth the facts and specifying the land to which defendant was entitled, forwarded the same to the commissioner of the General Land Office, accompanied by the proofs of the facts recited, in order that a patent might issue to him by the commissioner if he found no valid objection thereto. The court held that the right of defendant to a patent became perfect when the certificate of the surveyor and accompanying proofs showed, in the judgment of the commissioner, a compliance with the requirements of the Donation Act of 1850.

That the Town Site act of May 23, 1844, was not extended to Oregon until the act of congress of 17 of July, 1854, and even then it only operated to exclude land from a donation claim which had not been previously surveyed. Before the passage of this act the claim of defendant Starrs had been surveyed, and the required proof of his settlement and continued occupation and residence made, and

such steps had been taken as to perfect his right to a patent.

"The land embraced by his claim had then ceased to be the subject of purchase from the United States by any person, natural or artificial. The right to a patent once vested is treated by the government, when dealing with the public lands, as equivalent to a patent issued. When, in fact, the patent does issue, it relates back to the inception of the right of the patentee, so far as it may be necessary, to cut off intervening claimants."

The court therefore held, from the views expressed, that the plaintiff derived no title or estate in the premises in dispute by force of the patent to the corporate authorities of the city of Portland, although such patent was of prior date to that of the defendant.

This case of *Stark v. Starrs*, is authority for the proposition that where a claimant to public land has complied with the provisions of the law, and the regulations of the General Land Office, entitling him to a patent, that this is equivalent, so far as his equitable title is concerned, to a patent issued, and that the patent when issued relates back to the inception of the right of the patentee, so far as it may be necessary to cut off intervening claimants. It does not hold or decide, nor can it be perverted or construed in any way to countenance the doctrine of the Supreme Court of Missouri, in the case at bar, that where a claimant has never complied with any of the provisions of law, or the requirements of the General Land Office, in

making or attempting to make a location of a military bounty land warrant on a tract of the public lands of the United States by filing his application to locate his land warrant thereon, that such claimant acquires a vested interest in such tract by reason of some supposed or imputed intention to locate his warrant on such tract, and that the subsequent purchaser from the United States in due form of law of such tract so intended or presumed to be intended to be located with such warrant, holds the legal title secured to him by his patent in trust for the intended locator and his assigns.

Neither do any of the cases cited by this court in *Wirth v. Branson*, *Moore v. Robbins*, or *Stark v Starrs*, countenance any such doctrine.

The case of *Lytle v. Arkansas*, 9 How. 314, involved the validity of an entry on a fractional quarter section of land. The title of the complainants was based on a pre-emption right of their ancestor. The statement of the case shows that Cloyes, the pre-emptor in the prosecution of his claim to such pre-emption, proved his pre-emptive right and offered to pay the money for the land claimed by him, and subsequently paid the money. He had, says Mr. Justice McLean in delivering the opinion of the court, proved his right under the law to the satisfaction of the register and receiver of the Land Office. He had in fact done everything he could to perfect this right, no fault or negligence can be charged to him. And the court thereupon says: "Where an individual in the prosecution of a right does everything which the

law requires him to do, and he fails to attain his right by the misconduct or neglect of a public officer, the law will protect him."

In *Frisbie v. Whitney*, 9 Wall. 187, Whitney claimed a pre-emption right on a quarter section of land embraced within a Mexican grant which the Supreme Court had decided void for the want of authority of the Mexican government to make it. Shortly after his settlement, Whitney applied to the land officers to make his declaration to occupy and cultivate the land. He never paid any money, nor tendered any to the officers, nor did he receive a certificate of pre-emption. The land was subsequently patented to Frisbie, a *bona fide* purchaser from the owner of the grant, Vallejo, who paid his money, made his entry and received his patent. Whitney brought his bill in equity for a decree of title, on the ground that by reason of his possession and his offer to prove up his settlement he had an equity superior to Frisbie's as the holder of the legal title. There was a decree for Whitney in the court below, which this court reversed and remanded the cause, with instructions to dismiss the bill.

Mr. Justice Miller, in delivering the opinion of the court said that the inquiry in this case was whether Whitney had acquired a valid right in the land, which could not be divested by the subsequent act of congress withdrawing the land from the operation of the pre-emption law, and for the benefit of the *bona fide* purchasers from Vallejo. He says: "What has he done? He had gone upon

making or attempting to make a location of a military bounty land warrant on a tract of the public lands of the United States by filing his application to locate his land warrant thereon, that such claimant acquires a vested interest in such tract by reason of some supposed or imputed intention to locate his warrant on such tract, and that the subsequent purchaser from the United States in due form of law of such tract so intended or presumed to be intended to be located with such warrant, holds the legal title secured to him by his patent in trust for the intended locator and his assigns.

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the land, and perhaps, enclosed some of the ground. He had also applied to the register of the Land Office, and offered to make a declaration that he had done these things with the intention of making a permanent settlement, and claiming the land under the right of preemption. This is all. He paid no money, nor had he then tendered any. The land officers refused to receive his declarations and denied his right to preempt the land. He never paid any money. He has never received any certificate of preemption, and the register and receiver have never in any manner acknowledged or admitted his right to make pre-emption of that land. So far as anything done by him is to be concerned, his claim rests solely upon his going upon the land and building and residing on it. There is nothing in the essential nature of these acts to confer a vested right, or indeed any kind of claim to the land, and it is necessary to resort to the pre-emption law to make out the shadow of such right."

Mr. Justice Miller then reviews the acts of congress on this subject, and cites the opinions, of the Attorney General of the United States, and refers to the cases in regard to the equitable rights of persons claiming under those laws, and says that in all of the cases, the successful party had established his legal right of preference of purchase over the other, under the law as it stood when the land department decided the case. And it was the action of those officers, and their disregarding the law in refusing to the party the benefit of their

preference in purchase, which the court corrected by compelling the conveyance of the legal title, thus acquired by this violation of law.

This case of *Frisbie v. Whitney* was affirmed in the Yosemite Valley case 15 Wall. 77, and the court there held, that the pre-emptor first acquired, a vested interest in the public land, of which he cannot be subsequently be deprived, when all the preliminary acts prescribed by law for the acquisition of the title, have been performed by him.

In *Railway Company v. McShane*, 22 Wall. 444, the law required the payment of the costs of surveying, selecting and conveying the lands to the company, authorized by the act of 1864, before the land granted by that act should be conveyed to the company. The court held, that the payment of these a condition precedent to the right to receive the title from the government. Until this is done the *equitable title of the company is incomplete*. There remains a payment to be made to perfect it. There is something to be done, without which the company is not entitled to a patent.

In *Shepley v. Cowan*, 91 U. S. 330, which was a case in equity in error to the Supreme Court of Missouri, the court held that while *as against the United States* no vested right is acquired until all the prerequisites for the acquisition of title have been complied with, parties may, as against each other, acquire a right to be preferred in the purchase or other acquisition of the land, when the United States have determined to sell or dispose of

the property. In all such cases *the first in time in commencement of proceedings for the acquisition of the title,—when the same are regularly followed up—is deemed to be the first in right.* In that case Chartrand, the ancestor, had made settlement in 1835, upon the premises in controversy and application to prove his settlement and enter the land. This was refused on the ground that the land was reserved as a part of the commons of Carondolet. This claim on the part of Carondolet was held invalid by this court in 1862, *and thereupon the heirs of Chartrand presented to the officers of the land department proof of the right of preemption by their ancestor and themselves,* which were considered sufficient by the officers of the Land Department, and a patent thereon granted in July, 1866. This title was held superior to that of plaintiff who claimed under a patent of the State of Missouri, of prior date, February 27, 1850, under a grant of congress, September 4, 1841, but subsequent to the time of the commencement of Chartrand's possession and claim of preemption, thus duly asserted and followed up by his heirs.

The doctrine of this case above quoted, that when the legal title has been passed from the United States to one party, when in equity and good conscience and by the laws of congress on the subject it ought to go to another, the first in time will be deemed the first in right, and a court of equity will convert the holder of the legal title into a trustee and compel him to convey the legal title, is the well settled doctrine in this court; but in all the cases in

which it has been asserted it has been based on the established rules of equity and acts of congress concerning public land, and the party claiming the equitable right against the legal title has been held to have done or peformed those acts necessary to give him a vested interest in the land.

To charge the holder of the legal title of land under a patent of the United States as a trustee for another, and to compel him to transfer the title, the claimant must present such a case as will show that he, himself, was entitled to the patent from the government, and that by fraud, mistake or error of law, or other equitable ground, the legal title was granted to another.

Townsend v. Greeley, 5 Wall, 326;
Silver v. Ladd, 7 Wall, 219;
Meador v. Norton, 11 Wall, 442;
Johnson v. Towsley, 13 Wall, 72;
Carpentieir v. Montgomery, 13 Wall, 480;
Marquis v. Frisbie, 101 U. S., 473;
Bohal v. Dilla, 114 U. S., 27.
Vance v. Burbank, 101 U. S. 514.
Sparks v. Pierce, 115 U. S. 220.
Lee v. Johnson, 116, U. S. 49.
Cornelius v. Kessell, 128 U. S. 456.
Sanford v. Sanford, 139 U. S. 642.

And, before a court of equity will interfere to declare the holder of the legal title a trustee for an adverse claimant, such adverse claimant must show in his bill and by his proof that he has availed himself of all the right before the land department

officials, and that he has performed every requirement of the law and rules regulating the acquiring of title applicable to the land he claims; and he cannot set up his own laches, neglect, mistake, or inadvertence as an excuse for a failure to comply with the law, unless such default was brought about by the fraud, wrong, or misconduct of his adversary. No such showing is made in the case at bar. This is a fair statement of the law in this regard, deduced from the cases above cited.

"If by any error or mistake the entry was of a tract other than that which he intended to enter, the error was his, for the entry was of the precise tract described in his application. If there was any mistake in the numbers or description of the tracts intended, he (Freeman) was responsible. In such case the parties' only remedy is that pointed out by section 2372 Rev. St. U. S. Upon an application made as therein prescribed, the commissioner of the General Land Office, 'if entirely satisfied that the mistake has been made, and that every reasonable precaution and exertion had been made to avoid it, shall be authorized to change the entry and transfer the payment from the tract erroneously entered to that intended to be entered, *if unsold;* but, if sold, to any other tract liable to entry;' provided, also, that nothing herein contained shall 'effect the rights of third persons.'"

Manuel v. Fabyanski, 44 Minn. 74, 75.

The case of *Widdicombe v. Childers*, 124 U. S. 400, in error to the Supreme Court of Missouri,

is also relied on and cited by the Supreme Court of Missouri to sustain its judgment and decree of affirmance in this case.

In that case the evidence showed that Edward Jenner Smith in July, 1836, applied to the officers of the proper Land Office for the purchase of the *southeast* quarter of Section 36, Township 64, R. 6, in Clark county, Missouri, that his application was duly accepted and he completed the purchase by payment of the purchase money as required by law; that the entries made at the time by the proper officers in the tract and plat-books kept in the office showed that he had bought and paid for said *southeast* quarter, but that the register in writing his application described the *southwest* quarter by mistake; that he signed the application without discovering the error; that he immediately went into possession of the *southeast* quarter; as and for the land he purchased; that the entries on the plat and tract-books, showing his purchase of the southeast quarter were subsequently changed, but when or by whom such changes were made did not appear, so as to show his purchase had been of the southwest quarter instead of the southeast quarter; *that the southwest quarter had been previously purchased by Robert Wooden at private entry on November 8th, 1834, and this was shown by the records of the office*; and that this mistake in the written application was not discovered by Smith or those claiming under him until after Widdicombe had secured his patent in July, 1871, and after they

had been in possession under their claim to the *southeast* quarter for more than 35 years.

Under these facts and others in evidence the court held that the evidence established that Smith intended to buy, and the officers to sell to him the *southeast quarter* instead of the southwest quarter; that Widdecombe being a purchaser of that quarter section with knowledge of their right, was as a purchaser in bad faith. Their equities were superior to his, and that they were enforceable against him, even though he had secured a patent vesting the legal title in himself.

It will be seen from the above brief statement of the facts upon which the Childers case was decided, that it differs materially from the case at bar. In this case there is no evidence that Cavil M. Freeman intended to locate his warrant on the land in controversy, or that his written application to locate said warrant upon the *west half* of the southeast quarter section 28, township 61, *range 17*, described said land by mistake instead of the land in controversy *in range 14*; or that the land described in the application had been previously sold or disposed of by the United States, or that the records on the tract and plat-book showing the location of Freeman, of his warrant on the land in controversy, had been changed *without authority of law*; or that Freeman immediately after his purchase, or at any time, went into possession of the land in controversy, or paid taxes thereon; or that the mistake claimed was not discovered until

after plaintiff in error has procured his patent for the land in controversy, in September, 1885.

On the contrary the only evidence in this case concerning the application of Freeman for the location of his warrant, upon any land, is contained in the application itself, which the register officially certifies to be *correct*. That application shows his intention to enter the land described in the application. That land was open public land subject to entry or location and had never been previously sold to any person. It is true in this case that the register gave to Freeman a duplicate certificate of location by him of his warrant upon the land in controversy, and that he noted upon the tract and plat-book in his office notations showing such location, and that he afterward permitted an entry upon the land described in Freeman's written application; but the register reported the fact correctly to the land department at Washington, in his monthly returns for July, 1856, of the location of Freeman's warrant upon the land described in his written application certified under his hand that said location was correct and in accordance with law and instructions, and that land was thereupon withdrawn from sale; and when the attempted location of another military warrant on the same land by Pitt Cook, in May, 1857, was drawn to the attention of the Land Department in January, 1861, that was *cancelled* for the reason that said land had been located by Freeman by his warrant in July, 1856, and the officers of the Land Office at Boonville, Mo., were directed to make the proper notes upon the books and plats in their office

showing such cancellation, referring to the letter of the commissioner to that effect by its date. Further than this, Freeman surrendered in March, 1860, his duplicate certificate of location containing the erroneous description, and received a patent of the United States, dated in September, 1859, for the land correctly described in his written application. At this time, and until plaintiff's entry in 1885, the land remained vacant public land subject to private entry, so that Freeman must have had notice in March, 1860. when he received his patent, that his land warrant 8470 had been located upon the west half of southeast quarter of section 28, township 61, range 17, instead of on the land in controversy, because said patent expresely recited that it was in satisfaction of said warrant. There is no evidence in the case that Freeman, prior to the issue of said patent, or at any time paid any taxes on the land in controversy, or ever had possession thereof. It is true that in this case, as in the Childers case, changes and erasures were made on the tract-books and plat-books in the register's office at Boonville, changing the entries so as to show the errors on said books of the locations by Cavil M. Freeman of his warrant on the land in controversy and by Pitt Cook of his warrant on the land previously located on the land located with Freeman's warrant, but the evidence shows clearly that these changes were made by the officers in the local office, that they are in their handwriting, that they were made under the direction and by the authority of the land department at Washington upon

official letters preserved and on file in the local office, and that they were made before plaintiff's entry upon the land in controversy.

And we here beg leave to call the attention of the court to the manifestly unfair statement of the Supreme Court of Missouri in its opinion concerning the authority by which the erasures were made. Judge Sherwood, in quoting the letter of the commissioner of the General Land Office, dated February 15th, 1887, to the register and receiver at Boonville, as shown by his opinion on page 536, 120 Mo. R., concerning these records, omits the following pertinent and material portion of said letter, to wit: "In reply you are informed that Cavil M. Freeman located the west half of the southeast quarter of section 28, township 61, range 17 W., July 25, 1856, per warrant No. 8470, 80 acres, act 1855, for which patent was issued September 10th, 1859, *and you will see that your records agree with the above as shown by the records and files in this office.*"

This letter of the commissioner shows that, at the time of its date, the title passing by the patent in favor of Freeman, for the land described in it, was outstanding in his favor as against the United States. And there is no evidence that it was ever surrendered. Under such circumstances we may well ask, where is the equity for Freeman or his assignees so claim the legal title to another tract on the same location. If this be allowed, the effect of the decree is to give Freeman two eighty acre tracts of public land for one location of an

eighty acre land warrant, and thereby deprive the United States of one of the tracts without payment of any consideration therefor. This asserted power of court of equity to dispose of the public land has not heretofore received the sanction of this court.

In *Worth v. Branson*, *supra*, the patent to Egerton for the *southeast quarter*, instead of the *northeast* quarter, as recorded, *was void*, because the land had been previously granted by the United States to James Durney. In *Widdecombe v. Childers*, the land shown in the plat-book and described in the application of Smith *had been* previously purchased at private entry by Wooden, and the subsequent entry of Smith *was void*. In each of these cases title to but *one* tract of land passed by the entry. But here Freeman retains the title by patent to one eighty acre tract which he actually located, and obtains by a decree the title to another eighty acre tract which he never located.

The rule is well established in this class of cases that to authorize the court to divert the legal title out of the holder of the patent and vest it in another claiming the equitable right on the ground of fraud, error or mistake, the evidence must be clear, positive and convincing. Nothing material must be left to surmise or conjecture, and unless all the facts and circumstances surrounding the transaction when fairly considered are sufficient to satisfy the chancellor beyond any fair and reasonable doubt that a fraud, error or mistake has been com-

mitted in the procurement of the legal title, the relief sought will be refused.

"We take the general doctrine to be, that when in a court of equity it is proposed to set aside, to annul or correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal, and convincing, and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt. If the proposition, as thus laid down in the cases cited, is sound in regard the ordinary contracts of private individuals, how much more should it be observed when the attempt is to annul the grants, the patents, and the solemn evidences of title eminating from the government of the United States under its official seal. In this class of cases, the respect due to a patent, the presumption that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of titles depending upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by the proof." 121 U. S. S. C. 381. (Maxwell Land Grant case.)

And this is the doctrine of the Supreme Court of Missouri.

King v. Isley, 116 Mo. 159.
Berry v. Hartzell, 91 Mo. 1378.
Rogers v. Rogers, 87 Mo. 258-9.

Kennedy v. Kennedy, 57 Mo. 76.
Widdicombe v. Childers, 84 Mo. 304, 305.
Sensenderfer v. Smith, 66 Mo. 80.
Sensenderfer v. Neale, 66 Mo. 669.
Widdicombe v. Mercer, 72 Mo. 592.

The cases of *Sensenderfer v. Neale* and *Widdicombe v. Mercer*, last cited, are if followed by this court, are decisive of this case.

II.

The equitable defense set up in the answers of defendants failing for want of proof as required by the foregoing authorities, plaintiff in error was entitled to judgment on his legal title as shown by his patent.

Moore v. Robbins, 96 U. S. 530.
Bohal v. Dilla, 114 U. S. 51.

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Office Supreme Court, U. S.
FILED.
DEC 17 1896
JAMES H. McKENNEY,
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167-173

—IN THE—

Supreme Court of the United States.

OCTOBER TERM, 1896.

ROBERT G. HEDRICK,
Plaintiff in Error,

vs.

ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, JAMES G. WILSON AND JOHN G. SAUNDERS,
Defendants in Error.

No. 154.

In Error to the Supreme Court of the State of Missouri, Division No. 2.

Statement, Brief and Argument of Defendants in Error.

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Defendants in Error.

No. 154.

In Error to the Supreme Court of the State of Missouri, Division No. 2.

STATEMENT.

The defendants in error, for their statement, adopt the statement and opinion of the Supreme Court of the State of Missouri, reported in 120 Mo., 516. We desire, however, to call attention to the error in the transcript of the record, where the opinion of the Supreme Court of Missouri purports to be copied. At the top of page 73,

"Section 28, Township 61, Range 17," should be "Section 28, Township 61, Range 14." Again, at the top of page 79 of the transcript, the words in italics, "Section 28, Township 61, Range 14," should read, "Section 28, Township 61, Range 17."

The said statement and opinion of the Supreme Court of Missouri are as follows:

STATEMENT.

Ejectment brought September, 1890, for a strip of land which forms the right of way of the defendant railroad company through the west half of the southeast quarter of section 28, township 61, range 14, in Adair County. The appeal was taken under the provisions of section 2253, revised statutes 1889, only a certified copy of the decree made in this cause, etc., being sent up to this court, which decree was entered in favor of the defendant company, and the other defendants, and plaintiff has appealed therefrom.

Plaintiff relies on a patent from the United States, for the eighty which includes the litigated land, which patent is dated July 20, 1886. The answer of the defendant company consisted of a general denial, admission of possession, and the following: "And defendant further alleges that by the laws and statutes in such cases made and provided, it long prior to the bringing of plaintiff's action acquired good right and title to said premises, and the possession thereof.

"And for another and further defense defendant says plaintiff and those under whom he claims have never been in possession of said premises, or any part thereof, and have never paid any taxes thereon, but defendant and its grantors have been in actual, open, notorious and adverse possession of said premises for more than

thirty (30) years next before the filing of plaintiff's petition in this cause, holding and claiming said premises and every part thereof against all persons whomsoever, paying the taxes thereon in good faith, and making lasting and valuable improvements thereon.

"And for another and further defense to plaintiff's petition defendant says that on July 25, 1856, one Cavil M. Freeman duly and legally entered the west half of the southeast quarter of section 28, township 61, range 14, (which said tract includes the land described in plaintiff's petition), by laying and locating thereon under the military bounty land act of March 3, 1855, military bounty land warrant 8470, and thereupon received of the register of the land office at Milan, Missouri, at which office the said land was subject to entry, a certificate of such entry.

"That by accident, mistake or oversight, the application of said Freeman failed to describe said land, and placed it in some other range, but that it was the intention of said Freeman to enter said west half hereinbefore described, as it was also the intention of the said register and receiver that he should enter said land, and locate said warrant upon said land, and thereupon J. Seaman, then the register of said land office, issued to him said certificate in which said land was properly described as the west half of the southeast quarter of section 28, township 61, of range 14, and that proper notations of such entry were made and entered upon the tract and plat books of said office, showing the facts of said location and entry; that said Freeman thereupon accepted said certificate from said register, and delivered said land warrant therefor, and entered into the possession of the land so entered to-wit: the said west half of the southeast quarter of section 28, township 61, range 14, and so remained in

possession thereof, and paid taxes thereon, until the twenty-ninth day of February, 1860, when he by general warranty deed sold and conveyed said premises to one William A. Lane, who entered into the possession thereof and paid the taxes thereon until the fifteenth day of April, 1875, when he, by general warranty deed, sold and conveyed the same to one William E. Parcells, who thereupon entered into possession and paid the taxes thereon; that by means of regular mesne conveyances the right and title of Parcells was sold and conveyed to John G. Saunders and James G. Wilson, and all of said guartees of said Saunders and said Wilson, entered into actual possession of said premises, and improved the same in good faith, and paid the taxes thereon until the first of January, 1887, and said Wilson and Saunders by their several conveyances sold the premises described in plaintiff's petition to the Chicago, Santa Fe & California Railway Company of Iowa, which thereupon entered into a possession thereof, and commenced in good faith the construction of its line of railroad over said premises at great expense; that on the seventh day of March, 1887, said Saunders and Wilson, in pursuance of their several contracts, conveyed said premises by their several warranty deeds to said railway company, under which company defendant by regular conveyances claims to own said premises and the right to the possession thereof, and has in good faith made lasting, permanent and very valuable improvements thereon.

"That said Cavil M. Freeman, nor his assigns, have ever at any time made any claim upon the land which, by mistake, was described in the application of said Freeman, to locate said land warrant, nor has he nor they at any time ever been in possession of said land, or paid any taxes thereon, but both he and they have at all times, held and claimed the land herein in controversy as the

land entered and located by the said Freeman at said time and place.

"That on the twentieth day of July, 1886, the plaintiff with full knowledge and notice of the location of said land warrant and the entry of said land by said Cavil M. Freeman, and the fact of the possession of said Freeman and his grantees, and also the notations of said tract and plat books in the land office, for the purpose of cheating and defrauding the then owners of said land and their grantors, did fraudulently and wilfully cause the notations and entries of the said tract and plat books to be changed and altered, and did fraudulently enter said land, and cause to be issued to himself therefor a patent thereon from the general government with the view of cheating and defrauding the then owners of said land, and their grantors, and to secure the same with the valuable improvements thereon. That afterwards, on the seventh day January, 1887, he filed said patent for record in the office of the recorder of deeds in Adair county, Missouri, and the same was duly recorded in book 17, at page 469, of the records of said office.

"The defendant is informed and believes that one A. C. Widdicombe, who a long time has been a practicing attorney before the land office at Boonville, Missouri, in which office, the records, books, and papers of the former office at Milan, Missouri, were then and are now kept, and who is the son-in-law of the plaintiff, was the plaintiff's agent and attorney, and conducted and transacted the business for plaintiff, and secured said patent to be so as aforesaid fraudulently and illegally issued. And this defendant avers that said Widdicombe at the time of making said entry and securing said patent for plaintiff and long prior thereto had full knowledge of all the facts and circumstances connected with the entry of said Freeman, and also the knowledge that said land was occupied and owned by the grantees of said Freeman. And defendant

is also informed and believes that while said land is entered and patented in plaintiff's name, that the said Widdicombe is the real beneficiary of said transaction, and that he has large, if not the sole pecuniary interest in said land, and is in fact and in truth the real party plaintiff in interest in this action.

"Defendant avers that it and its grantors have by reason of the premises acquired and become possessed of, and in equity and good conscience are entitled to, all the equitable right and title of said premises and every part thereof, and that it would be wholly inequitable and unjust to allow plaintiff to take said premises from them, and that in equity plaintiff is and ought to be held as a mere trustee of the legal title for the use and benefit of defendant; wherefore defendant prays that the plaintiff be declared a trustee for the defendant, and that whatever title he may have, if any, by reason of the said entry and patent, be divested out of the plaintiff and vested in this defendant, and for all other and proper relief, orders and decrees that should in equity and good conscience be given, that are reasonable and right, and for general relief."

The defendants, Saunders and Wilson, on their own application were made parties defendant and filed an answer to plaintiff's petition similar in substance and effect to that filed by the defendant company. Plaintiff filed a motion to strike out a portion of the answer of Saunders and Wilson, which it seems was denied because on the same day, April 28th, 1891, that this motion was filed, the plaintiff filed a replication to the answer of said Saunders and Wilson. The answer of the defendant company as found in the abstract of the defendants, has been carefully compared with the original, and we have also read the original answer of Wilson and Saunders, as well as the motion by plaintiff to strike out, and his replication to said answer. We sent for the original bill of

exceptions and papers in this case, because of the following statement made in a supplemental brief by plaintiff's attorneys, A. C. Widdicombe and others, to-wit: "The additions, alterations, corrections, exceptions and suggestions offered as an additional abstract by respondent, are not warranted by the record. *First.*—The equitable count in defendant's answer, purporting to be set out in full by respondent, is not verified by the record. *Second.*—No separate answer of defendants Wilson and Saunders, neither in matter nor substance, was filed by either. They were made parties by their own motion, and leave given to plead within thirty days. No further mention appears of said parties in the record and no pleadings were filed by either of them." From the facts already set forth, the statement just copied cannot be *true*, nor can such statement be deemed the result of a mere *mistake*.

The decree in this cause as before stated, was entered for the defendant company and also for the other defendants for costs. In the decree findings were made on all the prominent issues, to-wit: That Cavil M. Freeman, under whom the defendant company claims through mesne conveyances) at the district land offices at Milan, Missouri, located military bounty land warrant number 8470, Act of Congress March 3, 1855, upon the west half of the southeast quarter of Section 28, Township 61, Range 14, West, which includes the land in question, and thereupon received a certificate of entry for said west half, etc., from the register of said land office, which entry was duly and properly posted on the books and records of said land office, by proper notation, and entries in the tract book, plat book and monthly abstract book; but by mistake said land was described in the application of Freemnn as being in range 17 instead of range 14; that Freeman sold and conveyed the land he had thus bought, and he and his grantees have, ever since his en-

try of the land, paid taxes thereon and exercised acts of ownership over the same, and that since April, 1875, said grantees have been in actual and continuous possession of said land, making lasting and valuable improvements, viz.: fencing, dwellings and barns; that the plat book in the office of the county clerk of Adair County, certified by the register of the land office in 1866, shows said west half in range 14 had been entered and located by said Freeman, and the books in said land office continued to show said entry of Freeman, until some time after 1874, when first additions and alterations began to be made; that said Freeman intended to enter, and did enter, said west half in range 14, and the land officers in the land office at Milan, Missouri, knew said intention of said Freeman, and that he intended to enter said tract, and they intended him to enter said tract, whereby he became and was vested with the equitable right to said land and to a patent therefor from the government; that in 1885 while defendants Saunders and Wilson were in the actual occupation of said land, plaintiff, taking advantage of the mistake made in said application, by his agent A. C. Widdicombe, who was also his son-in-law, and an expert lawyer, who had full knowledge of the original entries and notations in said books and records of the land office, as well as of the additions, alterations, erasures and defacements of said books and records then and now existing, made application for said tract of land, and did thereafter on the twentieth of July, 1886, secure a patent for said land; that plaintiff is not a purchaser in good faith, but is chargeable with full knowledge of all the rights and equities of the defendants therein, and holds the title evidenced by the patent as trustee for the defendant railroad company, etc. The decree then proceeds to divest the title out of plaintiff and to vest it in the defendant company, etc. Other facts will be stated as hereafter necessary.

OPINION.

SHERWOOD, J.—There was ample evidence to support the decree obtained in the court below. Although the action as begun was ejectment, yet the answers setting up equitable defenses converted the whole proceeding into an equitable one; this, of course, does away with any necessity for examining the declarations of law asked.

As will have been perceived, the controversy hinges on the number of the range, whether 14 or 17. The first paper offered in behalf of defendants, was the following, to-wit: A certificate of location and entry by Cavil M. Freeman.

"MILITARY BOUNTY LAND, ACT OF MARCH 3, 1855.

MILAN, MO., REGISTER'S OFFICE, July 25, 1856.

Military Land Warrant, No. 8470, in the name of Thomas Huelkeld, has this day been located by Cavil M. Freeman, upon the west half of the southeast quarter of section 28, in township 61, of range 14 subject to any preemption claim which may be filed for said land within forty days from this date.

Contents of tract located, eighty acres.

J. SEAMAN, Register."

They next introduced the plat book from the office of the Clerk of the County Court of Adair County, certified by the register of the land office, July 16, 1866, as follows:

Section 28, Township 61, Range 14.



(Copied from the township plat book in the office of the county clerk of Adair county).

Then follow mesne conveyances consisting of warranty deeds by which the land in question was conveyed to the defendant company and to its immediate grantors.

They also introduced in evidence exhibits "B," "F" and "D," as follows:

EXHIBIT B.

Township 61 North, Range No. 14 West, District of Chariton, Mo.

DESCRIPTION OF TRACT.				CONTENTS.		RATE PER ACRE.		PURCHASE MONEY.		NAME OF PURCHASER.	DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED.	
Part of Section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
1640 N½ Ne¼	28	61.N	14 W	80	00		75	60	00	John Glasgow	1855 Augt 27	6326	†x			
Se Ne & E½ Se	"	"	"	120	00		75	90	00	Hugh Chapman	1855 Oct 2	7013	†x			
Sw Ne	"	"	"	40	00	1	25	50	00	John Glasgow	1853 Dec 11	8268	†x			
E½ Nw¼ & Nw¼ Nw, see sec 20				120												
Sw¼ Nw qr	"	"	"	40	00	1	25	50	00	Wm. B. Morrison	1857 Sept 26th	14060				
* W½ Se¼	"	"	"	80	00	1	25	100	00	Robert G. Hedrick	Sept 1, 1885	42621				
W½ † Se †		(Error should be in R. 17) see Com. letter Feby 15, 1887.)		80	00	*Cavil*	*M.*	*Free*	*ma*	*n, Ass. of Thomas Huelkeld.*	1856, July 25	*Military land warrant No. 8470, act of 3rd March 1855. Belongs to R. 17*				
E½ Sw¼ & Sw¼ Sw¼, see sec 20				120												
E½ Se¼ 29 & Nw¼ Sw¼	"	"	"	120	00	1	25	150	00	Henry Cem	1841, Feby 24	22827	†See 28-61-15	*Commuted, see cash receipt 41487*		
Ne¼ Se¼ 29 & Nw¼ Sw¼	"	"	"	**80**	**00**			**7**	—	**John W. Link**	**Oct. 29th, 1870**	**8106**	**H, Act May 20, '62**			
Ne¼ Se¼ 29 & Nw¼ Sw¼	"	"	"	80	00	1	25	100	00	Jno. W. Link	May 30, 1871	41487	Commuted Hd No 8106			

† Written in pencil.

U. S. Land Office, Boonville, Mo., Dec. 26, 1890.

I, William McCracken, Register of the U. S. Land Office at Boonville, Mo., do hereby certify that the above and foregoing is a true and correct exhibit and copy of Sec. 28, Twp. 61, of Range 14 W. as the same appears on the tract book on file in this office. On the line where the W½ Se¼ appears, marked * and noted in red ink, viz: (Error should be in R. 17;) there appears to have been an erasure where the name "Cavil M. Freeman Ass. of Thomas Huelkeld" appears; also on the same line an erasure appears at the word "Military" and the words Cavil M. Freeman Ass. of Thomas Huelkeld written; in also the word "Military" is written in at the place of the last named erasure.

And I further certify that this office is not provided with a seal.

WM. McCRACKEN, Register.

Section 28, Township 61, Range 14.



(Copied from the township plat book in the office of the county clerk of Adair county).

Then follow mesne conveyances consisting of warranty deeds by which the land in question was conveyed to the defendant company and to its immediate grantors.

They also introduced in evidence exhibits "B," "F" and "D," as follows:

EXHIBIT B.

Township 61 North, Range No. 14 West, District of Chariton, Mo.

DESCRIPTION OF TRACT.				CONTENTS.		RATE PER ACRE.		PURCHASE MONEY.		NAME OF PURCHASER.	DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED.	
Part of Section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
†640 N½ Ne¼	28	61.N	14 W	80	00		75	60	00	John Glasgow	1855 Augt 27	6326	†x			
Se Ne & E½ Se	"	"	"	120	00		75	90	00	Hugh Chapman	1855 Oct 2	7013	†x			
Sw Ne	"	"	"	40	00	1	25	50	00	John Glasgow	1853 Dec 11	8268	†x			
E½ Nw¼ & Nw¼ Nw, see sec 20				120												
Sw¼ Nw qr	"	"	"	40	00	1	25	50	00	Wm. B. Morrison	1857 Sept 26th	14060				
* W½ Se¼	"	"	"	80	00	1	25	100	00	Robert G. Hedrick	Sept 1, 1885	42621				
W½ †* Se †*		(Error should be in R. 17) see Com. letter Feby 15, 1887.)		80	00	*Cavil M.*		*Free*	*ma*	*n, Ass. of Thomas Huelkeld.*	1856, July 25	*Military land warrant No. 8470, act of 3rd March 1855. Belongs to R. 17*				
E½ Sw¼ & Sw¼ Sw¼, see sec 20				120												
E½ Se¼ 29 & Nw¼ Sw¼	"	"	"	120	00	1	25	150	00	Henry Cem	1841, Feby 24	22827	†See 28-61-15	*Commuted, see cash receipt 41487*		
Ne¼ Se¼ 29 & Nw¼ Sw¼	"	"	"	80	00			7	—	John W. Link	Oct. 29th, 1870	8106	H, Act May 20, '62			
Ne¼ Se¼ 29 & Nw¼ Sw¼	"	"	"	80	00	1	25	100	00	Jno. W. Link	May 30, 1871	41487	Commuted Hd No 8106			

† Written in pencil.

U. S. Land Office, Boonville, Mo., Dec. 26, 1890.

I, William McCracken, Register of the U. S. Land Office at Boonville, Mo., do hereby certify that the above and foregoing is a true and correct exhibit and copy of Sec. 28, Twp. 61, of Range 14 W. as the same appears on the tract book on file in this office. On the line where the W½ Se¼ appears, marked * and noted in red ink, viz: (Error should be in R 17;) there appears to have been an erasure where the name "Cavil M. Freeman Ass. of Thomas Huelkeld" appears; also on the same line an erasure appears at the word "Military" and the words Cavil M. Freeman Ass. of Thomas Huelkeld written; in also the word "Military" is written in at the place of the last named erasure.

And I further certify that this office is not provided with a seal.

WM. McCRACKEN, Register.

EXHIBIT F.

Township 61 North, Range No. 17 West, District of Chariton, Mo.

DESCRIPTION OF TRACT.				CONTENTS.		RATE PER ACRE.		PURCHASE MONEY.		NAME OF PURCHASER.	DATE OF SALE.	NUMBER OF RECEIPT AND CERTIFICATE OF PURCHASE.	TO WHOM PATENTED.	DATE OF PATENT.	WHERE RECORDED.	
Part of Section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
* * *	* *	* *	* *	*	*	*	*	*	*	* * *	* * *	* *	* * *	* * *		
W½ Se¼	28	61 N	17 W	80	00	*Cash*	*M.*	*Free*	*ma*	*n, Assgn of Thomas Huelkeld*	*July 25, 1850*	*Military*	*Land Warrant 8470.*	*Oct. 1855.*		
Se¼ †Cancelled See Letter Jan 12, 1861	"	"	"	160	00	Pitt	Coo	ke, A	ss.	James Long	1857 May 21st	M L Warrant No. 7709 act 3		rd March 1855		
E½ Se¼	"	"	"	80	00	1	25	100	00	Wm. M. Vancleve	Sept 19, 1885	42624				

U. S. Land Office, Boonville, Mo., Dec. 26, 1890.

I, Wm. McCracken, Register of the United States Land Office at Boonville, Mo., do hereby certify that the above and foregoing abstract of the W½ Se ¼, Sec. 28, Twp. 61, of Range 17, West, is a true copy of the tract book on file in this office. Also abstract of Se¼, Sec. 28, Twp. 61, R. 17, to Pitt Cooke, Ass. James Long. Also E½ Se ¼, Sec. 28, Twp. 61, R. 17, to Wm. M. Vancleve, which is a true and correct copy of the tract book on file in this office.

And I further certify that this office is not provided with a seal.

WM. McCRACKEN, Register.

[Act 3rd March, 1855.

EXHIBIT D.

Monthly abstract of locations on Public Lands "subject to private entry," made for the month ending July 31st, 1856, at the Land Office at Milan, Mo., on Military Land Warrant Certificates, issued pursuant to the 1st Section of the Act of Congress, entitled "An act in addition to certain acts granting Bounty Land to certain officers and soldiers who have been engaged in the military service of the United States," approved March 3, 1855.

Register's and Receiver's No.*	Number of the Warrant.	WARRANT CERTIFICATE.		IN WHOSE FAVOR.	TRACT LOCATED.				DATE OF LOCATION.	BY WHOM LOCATED.	REMARKS.
		Date.	No. of Acres.		Quarter Section, or part of Quarter Section.	Township	Range	Contents.			
* *	* *	* * *	*	* * *	* * *	*	*	*	* * *	* *	* * *
1252½	8470	Oct. 11th, 1855	80	Thomas Huelkeld	W½ Se	61	17	80	July 25, 1856	Cavil M Freeman.	This was omitted on the register, hence the half No.

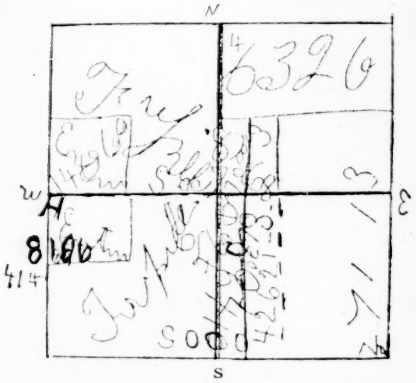
Land Office, Boonville, Mo., Dec 26, 1856.

I, Wm. McCracken, Register of the United States Land Office at Boonville, Mo., do hereby certify that the foregoing is a true copy of the abstract of warrant locations, Act of March 3, 1855, as the same appears of Record in this office. The figures 17, describing the range, shows an erasure, and the figures 17, inserted.

WM. McCRACKEN, Register.

They also introduced in evidence, exhibit C, attached to McCracken's deposition, as follows:

EXHIBIT C.



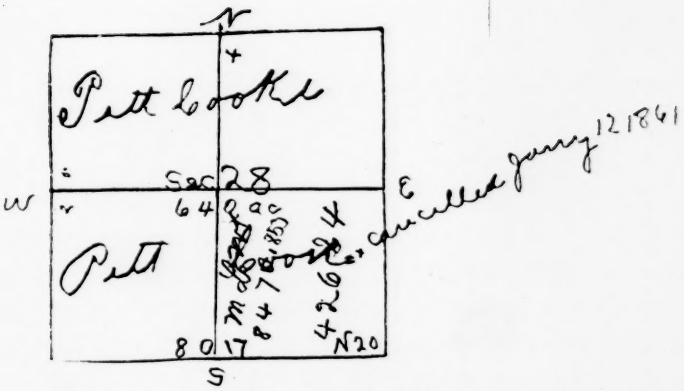
"Boonville, Mo., Dec. 26, 1890.

I, Wm. McCracken, Register of the United States Land Office at Boonville, Missouri, do hereby certify that the diagram hereto attached is a true copy of section 28, township 61, range 14 west, as the same appears on the plat on file in this office, as near as I am able to trace the same, and that there are some interlineations and figures in the west half of southeast quarter and the southwest quarter of northeast quarter of said section 28, which are unintelligible or illegible.

WM. MCCRACKEN, Register."

Then they introduced in evidence, relating to the plat book of 28-61-17, and also the certificates of the register thereto, as follows:

EXHIBIT G.



"U. S. Land Office, Boonville, Mo., Dec. 26, 1890.

I, Wm. McCracken, Register of the U. S. Land Office, Boonville, Missouri, do hereby certify that the above diagram is a true tracing and copy of section 28, township 61, range 17, as the same appears on the plat book, on file in this office.

And I further certify that this office is not provided with a seal. WM. MCCRACKEN,

Register."

Next in evidence they introduced "Exhibit 31;" Mr. Guthrie offers and reads in evidence the plat book of Adair county relating to section 28, township 61, range 17, in words and figures following, to-wit:

EXHIBIT 31.

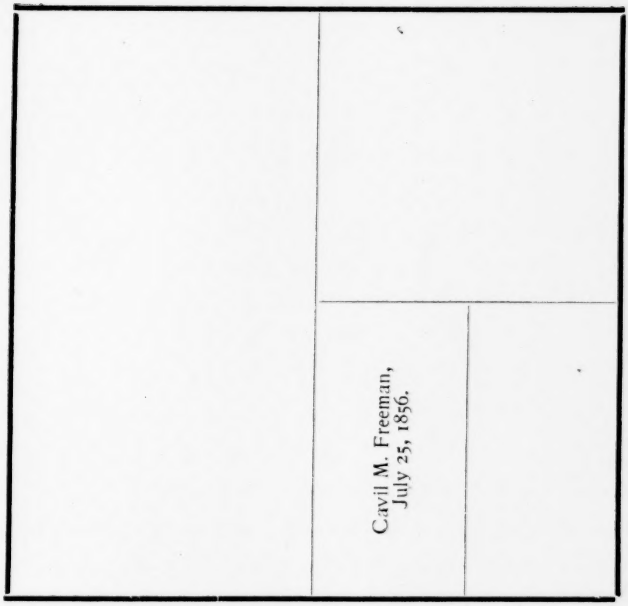
Section 28, Township 31, Range 17.



(Copied from the township plat book in the office of the county clerk of Adair county).

This plat was certified July 16, 1866, as was the one heretofore mentioned. The exhibit last copied, is that taken from defendant's abstract, and it conforms exactly, to the *original* bill of exceptions now before us. Plaintiff's abstract has, and calls for, *no such exhibit as 31*, and on pages 51 and 52 of his abstract, is this: "Mr. Guthrie offered and read in evidence the plat book of Adair county, relating to section 28, township 61, range 17, in words and figures following, to-wit:"

Section 28, Township 61, Range 17.



(Copied from the township plat book in the office of the County Clerk, Adair County).

A similar *departure* from the original bill of exceptions occurs in the alleged "transcript of the record," which was filed in this court by plaintiff's counsel after the term began, without any request on our part, and after the cause had already been brought up on a short transript, as aforesaid. The alleged transcript indeed, in its index calls for exhibits ranging from *1* to *33*, but No. *31* is omitted as well in the index as in the body of the transcript, and in its place is substituted "exhibit 30," which was the first paper offered by defendants as before stated, and had already been copied at page 18 of the alleged transcript as "exhibit 30," but was made to do duty

again as "exhibit 30," on page 88, of the same document, where range *14* was changed to *17*, and where instead of Pitt Cook's name under date of May 21, 1857, covering the whole of the southeast quarter of section 28, is found that of Cavil M. Freeman, under date July 25, 1856, covering only the west half of the southeast quarter of section 28. With these *slight* discrepancies, however, plaintiff has made a very excellent copy of the original "exhibit 31," though he does not appear to be acquainted with it by that name. Other exhibits called for have not been copied in the original bill of exceptions, nor in plaintiff's abstract.

Evidence was also adduced showing a thorough familiarity of plaintiff's attorney, Widdecombe, for twenty-five years with business before the land office, in the disposal of the public lands, as well as a familiarity with the records of said office; this much he admits himself. Among other questions asked him was the following:

"Q. State if the following entry appeared on the record at the time you made the application for Mr. Hedrick: 'West half of southeast quarter, section 28, township 61, range 14, eighty acres, Cavil M. Freeman, assignee of Thomas Huelkeld, 1856, July 25, military land warrant No. 8470, act third March, 1855?' A. I have no doubt that it did, with the additional notation thereon 'belongs to R. 17,' which means range 17."

In January, 1887, after the filing of the patent for record, by Widdecombe, defendants Wilson and Saunders sent their attorney, Mr. Joseph Park, to Boonville to investigate the matter. He examined the tract book in the land office and found this notation: "W., $\frac{1}{2}$, S. E., $\frac{1}{4}$ of section 28, township 61, range 14, 80 acres, Cavil M. Freeman, assignee of Thos. Huelkeld, July 25, 1856, military land warrant, No. 8470, act March 3, 1855." Now, that was the numbers of the record at that time without

any erasure or any interlineations. The notation on the plat book on the west half of the southeast quarter of section 28, township 61, range 14, was "Cavil M. Freeman, July 25, 1856."

Park is corroborated as to the condition of the notations on the books in the land office in January, 1887, by the letter from the Assistant Commissioner of the General Land Office at Washington, of February 15, 1887, and addressed to the register and receiver at Boonville: "Gentlemen:—I am in receipt of your letter of January 27, 1887, stating that your records show that the west half of the southeast quarter of section 28, township 61, range 14, was located by Cavil M. Freeman, July 25, 1856, per warrant No. 8470, act 1855, and that you were 'shown an abstract of title from the records of Adair County, Mo., a regular chain from the said Freeman to the present occupant of the land, Mr. James H. Saunders.'"

Three years later, December, 1890, Mr. Park returned to Boonville to take the depositions for use in the case. He found the entries relating to the tract in question as follows, on the tract book: "On December 26th, 1890, there appeared on this line, this star in pencil and marked in red ink 'Belongs to R. 17.' And where the words 'Cavil M. Freeman' now appear is a plain erasure and mutilation, and then in darker and much later ink the name of Cavil M. Freeman, re-written in the same place. And where the word 'military' is written is a plain erasure and a total destruction of whatever had been written there, and the word 'military' is written in black ink at a much later date, and from its appearance in a different handwriting from the name and the other writing that was not erased."

The star on the Freeman entry, made in pencil, seemed to be referred to from the Hedrick entry, which had

again as "exhibit 30," on page 88, of the same document, where range *14* was changed to *17*, and where instead of Pitt Cook's name under date of May 21, 1857, covering the whole of the southeast quarter of section 28, is found that of Cavil M. Freeman, under date July 25, 1856, covering only the west half of the southeast quarter of section 28. With these *slight* discrepancies, however, plaintiff has made a very excellent copy of the original "exhibit 31," though he does not appear to be acquainted with it by that name. Other exhibits called for have not been copied in the original bill of exceptions, nor in plaintiff's abstract.

Evidence was also adduced showing a thorough familiarity of plaintiff's attorney, Widdecombe, for twenty-five years with business before the land office, in the disposal of the public lands, as well as a familiarity with the records of said office; this much he admits himself. Among other questions asked him was the following:

"Q. State if the following entry appeared on the record at the time you made the application for Mr. Hedrick: 'West half of southeast quarter, section 28, township 61, range 14, eighty acres, Cavil M. Freeman, assignee of Thomas Huelkeld, 1856, July 25, military land warrant No. 8470, act third March, 1855?' A. I have no doubt that it did, with the additional notation thereon 'belongs to R. 17,' which means range 17."

In January, 1887, after the filing of the patent for record, by Widdecombe, defendants Wilson and Saunders sent their attorney, Mr. Joseph Park, to Boonville to investigate the matter. He examined the tract book in the land office and found this notation: "W. $\frac{1}{2}$, S. E. $\frac{1}{4}$ of section 28, township 61, range 14, 80 acres, Cavil M. Freeman, assignee of Thos. Huelkeld, July 25, 1856, military land warrant, No. 8470, act March 3, 1855." Now, that was the numbers of the record at that time without

any erasure or any interlineations. The notation on the plat book on the west half of the southeast quarter of section 28, township 61, range 14, was "Cavil M. Freeman, July 25, 1856."

Park is corroborated as to the condition of the notations on the books in the land office in January, 1887, by the letter from the Assistant Commissioner of the General Land Office at Washington, of February 15, 1887, and addressed to the register and receiver at Boonville: "Gentlemen:—I am in receipt of your letter of January 27, 1887, stating that your records show that the west half of the southeast quarter of section 28, township 61, range 14, was located by Cavil M. Freeman, July 25, 1856, per warrant No. 8470, act 1855, and that you were 'shown an abstract of title from the records of Adair County, Mo., a regular chain from the said Freeman to the present occupant of the land, Mr. James H. Saunders.'"

Three years later, December, 1890, Mr. Park returned to Boonville to take the depositions for use in the case. He found the entries relating to the tract in question as follows, on the tract book: "On December 26th, 1890, there appeared on this line, this star in pencil and marked in red ink 'Belongs to R. 17.' And where the words 'Cavil M. Freeman' now appear is a plain erasure and mutilation, and then in darker and much later ink the name of Cavil M. Freeman, re-written in the same place. And where the word 'military' is written is a plain erasure and a total destruction of whatever had been written there, and the word 'military' is written in black ink at a much later date, and from its appearance in a different handwriting from the name and the other writing that was not erased."

The star on the Freeman entry, made in pencil, seemed to be referred to from the Hedrick entry, which had

been posted a line or two above, and had a similar pencil star to it. The Freeman entry was also at that time marked by an index hand in pencil with the finger pointing to the Hedrick entry above. At the right hand end of the line on which the Freeman entry was noted, was added in red ink, "Belongs to R. 17." This red ink notation was in the handwriting of Gustave Reiche, whose whereabouts prior to and at the trial defendants were not able to ascertain.

It also appears that after the receipt of the letter of February 15, 1887, from the general land office, the then register, Mr. Wright, had written on the right hand end of the line of the tract-book on which the Hedrick entry was posted, in red ink, the words; "Correct; see Com. letter, February 15, 1887;" and had inserted on the line on which the Freeman entry was noted, and just after "W. $\frac{1}{2}$, S. E. $\frac{1}{4}$," in red ink these words, figures and characters: "Error; should be in R. 17; see Com. letter, February 15, 1887."

As to the plat book, in December, 1890, Mr. Park found the following: "The witness' attention was called to exhibit 'C,' attached to McCracken deposition, which he stated he compared with the original the best he could, and saw it made—traced. The condition as shown, is correct so far as we could make the marks, but there were so many erasures and re-markings that nothing but a glass could show it all. In January, 1887, the name of Cavil M. Freeman, July 25, 1857, appeared on the west half of the southeast quarter of Section 28, Township 61, Range 14, on the plat book. On December 26, 1890, the west half of the southeast quarter of Section 28, Township 61, Range 14, didn't appear to have the name of Cavil M. Freeman so it could be read at all. There appeared to have been erasures and mutilations, so that this plat is as correct a tracing as the register could

make it, but it scarcely reads anything at the present time."

The monthly abstract of location under military land warrants (Exhibit D.) was examined by Mr. Park in December, 1890. Witness identified Exhibit D, attached to McCracken's deposition, and stated he had seen the book from which it was made. "I cannot testify whether the figure 7 in 17 under the range column is as when copied, but I can tell you what appeared there. Just as plain an erasure of the figure 4 where the figure 7 is written as anything can be."

The records as to section 28, township 61, range 17, and the testimony in relation thereto are briefly as follows: "Exhibit F," copied from the tract-book, shows "W. $\frac{1}{2}$, S. E, Qr. Cavil M. Freeman, Assignee, etc., July 25, 1856, Military Land Warrant, 8470, Act 1855." Then follows in red ink: "S. E. $\frac{1}{4}$ * * Pit Cooke, Ass. James Long, 1857, May 21," etc. The notation now has a line run through a portion of it with a pencil, and just at the left and running down under the "S. E. $\frac{1}{4}$" there is penciled these words: "Cancelled. See letter, June 12, 1861." Next below the Cooke entry came: "E. $\frac{1}{2}$, S. E. $\frac{1}{4}$, * * * 80.00, * * 1.25, * * 100.00. Wm. M. Vancleve, Sept. 19, 1885," etc.

Mr. Park does not remember positively the condition of the tract book in 1887, save that it showed that Cooke had entered the north half and the south half, and the notation was in pale red ink. "I examined the Vancleve entry in December last, and it compared in color, freshness, age and handwriting with the Freeman entry." Hoge, the receiver of the Boonville land office, testifies that the Vancleve and Freeman entries are the same handwriting, that is, as far as the entries go. "I think the

entries immediately preceding and succeeding the entry of Vancleve and the entry of Cavil M. Freeman, are in the same handwriting and in pale red ink. The entries of Vancleve and Cavil M. Freeman are in black ink."

Evidence was also introduced on behalf of defendant showing actual possession of the premises by them or those under whom they claimed in 1875, and continuously maintained ever since; that taxes on said land have been paid ever since, and that Freeman had, up to the time he conveyed the land in 1860 by general warranty deed, claimed the land in controversy.

As will have been noticed, this cause in all its essential features and predominant characteristics, is the center part of *Hedrick* v. *Beeler*, 110 Mo., 91, 19 S. W. Rep., 492, heard before the same circuit judge as this cause, and with a like result as in the present instance. In *Beeler's case* there were alterations, mutilations, erasures, etc., of the record, and the name of *A. C. Widdicombe* appears as an assistant to the same plaintiff in procuring his title in that case; so, also, in this. We have had several cases in this court of contests over land, and in each of them, where *that* name appeared, there also invariably followed in its wake as *coincidences*, erasures, alterations and mutilations of the record. *Hedrick* v. *Beeler*, *supra*; *Widdicombe* v. *Childers*, *84 Mo. 382*; *S. C., 124 U., S. 400*; *Widdicombe* v. *Mercer*, *72 Mo., 588*; *Hedrick* v. *Stohl*, *105 Mo., 43*.

That most outrageous changes in the case at bar have been made on the respective books in the land offices, is patent to even casual observation. Now these changes in the records were not *accidental*; pen and pencil without some hand to guide them do not, in the ordinary course of human events, make erasures or alterations on records, or deface the same. There was a *motive* then,

at the back of these alterations and a hand to back that motive and effectuate it. Defendants Saunders and Wilson would be moved by every consideration of self-interest to maintain the record as it was, while only plaintiff or some one interested in his success, would be desirous of making any change.

If these alterations existed only to the extent already set forth as admitted by Widdicombe, then that was sufficient to put Widdicome, the agent, or undisclosed principal, on inquiry, and this was sufficient as notice. If on the other hand, as Widdicombe says in another place, the records were in precisely the same condition as now, when he entered the land, then certainly, owing to the *very looks* of the records as shown by the exhibits C, G, and others, there could not be any quibble whatever over the question that thereby he was put on inquiry, and that is undoubtedly sufficient as evidence of notice; for a purchaser *with notice* and a purchaser *in bad faith* are correlative terms, and the holder of a legal title in bad faith must always yield to a superior equity. In such case, the holder of the legal title may be secure as against the United States, but not as against one who had acquired a prior right from the United States in force when his patent issued. *Widdicombe* v. *Childers*, *124 U. S.*, *supra*.

Again, Freeman complied with all the terms and conditions necessary to entitle him to a patent to the tract of land in controversy; having done so, he acquired a vested interest therein, and became the equitable owner thereof, and while his entry or location remains in full force, his rights in the premises can not be defeated by the issuance to another party of a patent to the same tract. The public faith has become pledged to the prior party and any subsequent grant of the same tract to another party is void, unless the first location be vacated. *Wirth* v. *Branson*,

98 U. S. 118; *Branson* v. *Wirth*, 17 Wall., 32; *Moore* v. *Robbins*, 96 U. S., 530; *Stark* v. *Starrs*, 6 Wall., 402. And the fact that a patent was issued to Freeman for a different tract of land, can not affect or defeat his right to the premises in dispute. *Wirth* v. *Branson*, *supra*.

We have been cited to the case of *Widdicombe* v. *Mercer*, 72 Mo., 588, and *Sensenderfer* v. *Neale*, 66 Mo., 669, and especially the latter, as decisive of this case. Doubtless this is so, but, as shown by the former cases cited, we have long since ceased to follow those cases.

Holding these views, we affirm the decree of the circuit court. All concur.

BRIEF AND ARGUMENT.

I.

The Court below determined the facts adversely to the plaintiff in error and this finding is conclusive upon this Court, so that it only remains for this Court to determine the law applicable to such facts.

A. The only power, possessed by this Court, to review a final judgment or decree in any suit in the highest court of a State, is conferred by Section 709, Revised Statutes. It is there provided that such judgment or decree may be re-examined, reversed or affirmed by this Court, *upon a writ of error*. There is no provision, in the law, for an *appeal* from the highest court of the State to the Supreme Court of the United States. In proceedings upon a *writ of error*, the only power of a reviewing Court is to correct *errors of law;* it cannot examine questions of fact, for the purpose of determining whether the facts found by the State court are supported by the weight of the evidence. This is true, not only by the general rules of law applicable to the proceedings upon writ of error, but it is also true by virtue of statute. Section 1011, Revised Statutes, is as follows:

"There shall be no reversal in the Supreme Court or in a Circuit Court upon a writ of error for error in ruling (*and*) (any) plea in abatement, other than a plea to the jurisdiction of the Court, *or for any error in fact.*"

We submit, therefore, that by the terms of positive law, the decree of the State court cannot be reversed for any error in the determination of matters of fact, and

that this Court is precluded from the examination of the matters of fact in the record, except in so far as such examination is necessary to determine whether there exists a federal question in this cause.

B. Independent of statute, the general rule of law is that a *writ of error* brings up *questions of law* for re-examination by the supervising court and not *questions of fact*; that an *appeal*, on the other hand, brings before the superior court, both questions of law and fact for determination.

In the various provisions of the statutes regulating writs of error and appeals, the terms are not used interchangably. They are always used in their well known technical and legal signification. An appeal is a process of civil law origin and removes the entire case, subjecting the fact as well as the law to a re-examination. A writ of error is a process of common law origin and removes nothing for re-examination but the law. This was first decided in the case of *Wiscart* v. *Dauchy*, 3 Dallas, 321, which was a *bill in equity*, filed to set aside certain decrees as fraudulent against the plaintiff, a creditor of the grantors. In stating the distinction between an appeal and a writ of error, Chief Justice Ellsworth, speaking for the Court, said:

"It is to be considered, then, that the judicial statute of the United States speaks of an appeal and of a writ of error, but it does not confound the terms, nor use them promiscuously. They are to be understood, when used, according to their ordinary acceptation, unless something appears in the act itself to control, modify, or change the fixed and technical sense which they have previously borne. An appeal is a process of civil law origin, and

removes a cause entirely, subjecting the fact as well as the law, to a review and re-trial, but a writ of error is a process of common law origin, and it removes nothing for re-examination but the law. Does the statute observe this obvious distinction? I think it does."

The Court holds that even in an equity case, which by the law, as it then existed, was brought to the Supreme Court by writ of error, findings of fact, contained in the decree of the lower court, were conclusive, and that the only question, which could be re-examined, was whether the law had been correctly applied to such facts. In passing upon this question the Court says:

"It is to be observed, that a writ of error is a process more limited in its effects than an appeal; but, whatever may be the operation, if an appellate jurisdiction can only be exercised by this court conformably to such regulations as are made by the Congress, and if Congress has prescribed a writ of error, and no other mode by which it can be exercised, still, I say, we are bound to pursue that mode, and can neither make nor adopt another. The law, may indeed, be improper and inconvenient; but it is of more importance for a judicial determination, to ascertain what the law is, than to speculate upon what it ought to be. If, however, the construction, that a statement of facts by the Circuit Court is conclusive, would amount to a denial of justice, would be oppressively injurious to individuals, or would be productive of any general mischief, I should then be disposed to resort to any other rational exposition of the law which would not be attended with these deprecated consequences. But, surely, it cannot be deemed a denial of justice, that a man shall not be permitted to try his cause two or three times over. If he has one opportunity for the trial for all the parts of his case, justice is satisfied; and even if the decision of the Circuit Court had been made final, no denial of justice could be imputed to our government; much less can the imputation be fairly made, because the law directs that in cases of appeal, part shall be decided by one tribunal

and part by another; the facts by the Court below, and the law by this Court. Such a distribution of jurisdiction has long been established in England."

In the case of *Cohens* v. *Virginia*, 6 Wheat., 264, this Court, speaking through Chief Justice Marshall, drew the distinction between an appeal and writ of error, using the following language, page 411:

"The writ of error is given rather than an appeal, because it is the more usual mode of removing suits at common law; and because, perhaps, it is more technically proper where a single point of law, and not the whole case, to be re-examined."

The case of *Wiscart* v: *Dauchy*, *supra*, is quoted with approval by this Court in the case of *United States* v. *Goodwin*, 7 Cranch, 108, where the Court says, at page 110:

"The question, then is, whether the word appeal, in the 22nd section, is to be understood technically, or merely as descriptive of the appellate jurisdiction of the superior court, without regard to the particular mode by which a cause is transmitted to that jurisdiction?

"This question appears to have been considered by the Supreme Court so early as the year 1796, in the case of *Wiscart* v. *Dauchy*, 3 Dallas, 321. Chief Justice Ellsworth, in delivering the opinion of the Court in that case, expresses himself as follows: 'The act of 1789, speaks of appeal and writ of error, but does not confound them. They are to be understood according to their ordinary acceptation. An appeal is a civil law process, and removes a cause entirely, subjecting the law and fact, to a review and retrial. A writ of error is a common law process, and removes for re-examination nothing but the law. This statute observes this distinction. In admirality and maritime causes, an appeal is allowed from the district to the circuit court, if the matter in dispute exceeds $300, and yet decrees and judgments in civil actions may be removed by writ of error from the district to the cir-

cuit court, though the value barely exceeds $50.' In another part of this opinion, the Judge adds, 'that as to the appellate jurisdiction of the Supreme Court, the 22nd section says, and upon a like process, that is, upon a writ of error, shall final judgments and decrees in civil actions, namely, cases not criminal, and suits in equity, &c. Among the causes that may be brought to the Supreme Court, by writ of error, are cases which have been removed to the Circuit Court, by appeal from a District Court, which can only be cases of admirality and maritime jurisdiction.' "

"The objection made to this interpretation of the word appeal, that judgments in civil actions at common law, commenced in a district court, could be re-examined only in a circuit court, if well founded in itself, could not, with any propriety, be addressed to courts, after the legislative meaning of the term is ascertained. The technical distinction between a writ of error, and an appeal, and between the different cases to which they were applicable, was clearly marked in the act of the 13th of February, 1801, which was afterwards repealed by the act of the 8th of March, 1802."

In *Hemmenway* v. *Fisher*, 20 How., 255, (258), a distinction is pointed out between a writ of error and an appeal, founded upon the general principles of law, in this language:

"But the writ of error from its form and the principles which govern it is peculiarly appropriate to judgments at common law, and is inconvenient and embarrassing, when used as process to remove decrees in chancery and admirality to a superior court."

The same ruling obtains in *Genners* v. *Campbell*, 11 Wall., 193, where the Court says, page 199:

"For any error in relation to the facts, a writ of error is not the proper remedy. If all the testimony given were set out in the record, we could not examine it with the view of determining whether it is sufficient to support the judgment."

A clear statement of the rule contended for by defendants in error is to be found in *Re Neagle*, 135 U. S., 1, where the Court, speaking through Mr. Justice Miller, says, at page 42:

"It will be observed that in both the provisions of the Revised Statutes and of this latter Act of Congress the mode of review, whether by the circuit court of the judgment of an inferior court, or justice or judge, or by this court of the judgment of a circuit court, the word "appeal," and not "writ of error" is used, and as Congress has always used these words with a clear understanding of what is meant by them, namely, that by a writ of error only questions of law are brought up for review, as in actions at common law, while by an appeal, except when specially provided otherwise, the entire case on both law and facts is to be reconsidered, there seems to be little doubt that, as far as it is essential to a proper decision of this case, the appeal requires us to examine into the evidence brought to sustain or defeat the right of the petitioner to his discharge."

In the case of *Dower* v. *Richards*, 151 U. S., 658, the Court says:

"The principal ground on which the plaintiffs in error seek to reverse the judgment of the supreme court of California, is that its decision in matter of fact was erroneous and contrary to the weight of the evidence in the case. But to review the decision of the state court upon the question of fact is not within the jurisdiction of this court.

In the legislation of Congress from the foundation of the government, a writ of error which brings up mattef of law only has always been distinguished from appeal which unless expressly restricted brings up both law and fact."

The court reviews many authorities, citing, among others, *Republican River Bridge Co.* v. *Kansas Pacific Rwy. Co.*, 92 U. S., 315. The latter case was an action at

law and it was held that the findings of the lower court were conclusive upon this Court. It was said in the opinion:

"In chancery cases or any other class of cases where all the evidence becomes part of the record in the highest court of the state, the same record being brought here, this court can review the decision of that court on both the law and the fact so far as may be necessary to determine the validity of the right set up under act of Congress."

It is to be observed, however, that this ruling was not necessary for the decision of the case, which was an action at law. No authorities were cited and no reference was made to the contrary rule, which, as above shown, has been established by repeated decisions of this court. We do not believe, therefore, that it was intended to establish any different rule or to overrule the authorities upon the question which are quoted above.

We respectfully submit that no reason exists why questions of fact, even in chancery cases, should be re-examined in this court on writs of error to state courts for the purpose of determining whether the decision of the state court was correct upon the facts. The only purpose of permitting a writ of error from the Federal court to the state courts is to secure uniformity upon Federal questions. The construction of the constitution and laws of the United States is the peculiar province of its own courts. It appeared undesirable to the Federal legislators that there should be various and conflicting construction of Federal laws by state courts; and hence the courts of the United States are the courts of last resort, in the determination of Federal questions; and this is true for

the purpose of securing uniformity. There is no reason why the determination of questions of fact made by the state courts should be reviewed by the Federal courts. Uniformity in the determination of Federal questions is amply secured by leaving to the state courts the right to pass upon and determine questions of fact in chancery cases according to the weight of the evidence, leaving to the Federal courts the right to say what law should be applied to such state of facts, when a Federal question is involved.

This seems to have been the policy of Congress from the beginning. The only method of reviewing a decree of the highest court of the state by the Federal courts is by a writ of error. Before any legislation on the subject, the terms appeal and writ of error had acquired a well defined meaning. It is to be presumed that Congress, in providing that the only method of reviewing the final decree of a state court, should be by writ of error, intended that the terms should be used in its well understood signification. Had Congress intended that this Court upon writ of error to the state court should have the power of reviewing the facts and determining which side had the weight of the evidence, it cannot be questioned that it would have employed the appropriate word appeal. Having used the words *writ of error* in this connection and not *appeal*, for over a hundred years, and especially in view of the adjudication of this Court defining a writ of error in this connection, we respectfully submit, that this Court, in passing upon the case at bar is concluded by the finding of facts made by the state court; that its province is to

apply to these facts its construction and interpretation of the Federal laws applicable to the case.

In various courts, it is held, as we contend here, that a writ of error brings up for review questions of law, but does not authorize the supervising tribunal to examine the facts, even in chancery cases, for the purpose of deciding which party has the weight of the evidence.

Campbell v. *Patterson*, 7 Vt., 86;
Riley v. *Waugh*, 8 Cush., 220;
Moore's Appeal, 48 Mich., (441) 449;
Rand v. *King*, 134 Pa. St., 645;
Warsaw Township v. *Knox Township*, 107 Pa. St., 301;
Beall v. *Powell*, 4 Ga., 525;
Raymond v. *Butterwood*, 139 Mass., 471.

II.

Upon the facts as found by the State Court, the law is that the defendants were entitled to the decree therein rendered.

The decree of the State circuit court, (Transcript, page 3), finds that on July 25, 1856, Cavil M. Freeman, at the district land office at Milan, Mo., where the land in controversy was subject to entry, located military bounty land warrant number 8470, Act of Congress March 3, 1855, upon the west half of the southeast quarter of section 28, township 61, north range 14, west of the fifth principal meridian, which includes the land in question, and thereupon received a certificate of entry for said west half from the register of said land office, which entry was duly and properly posted on the books and records of

said land office by proper notations and entries in the tract-books, plat book and the monthly abstract book, but by mistake and oversight said land was described in the application as being in range seventeen (17) instead of range fourteen (14); that on September 1, 1885, the plaintiff, taking advantage of the mistake made in said application, by his agent, A. C. Widdicombe, who was also his son-in-law, and an expert lawyer, who had full knowledge of the original entries and notations in said books and records of the land office, as well as of the additions, alterations, erasures and defacements of said books and records, then and now existing, made application to enter said tract of land and did thereafter on the 20th day of July, 1886, secure a patent for said land; that the plaintiff is not a purchaser of said land in good faith without notice of the defendants' estate therein, but that he is chargeable with full knowledge of all the rights, equities and estate of defendants in and to said premises and holds the legal title evidenced by said patent as trustee for the defendants; that the defendants claim under said Freeman by regular conveyances and that they and their grantors have been in continual and constant possession of said land in range fourteen (14) since April, 1875, and have paid all taxes thereon and made lasting and valuable improvements.

The only fairly debatable question in the case is one of fact; that is, did Freeman in 1856 intend to locate the land in controversy in range fourteen (14) and did the register intend that he should make such location? The state courts answered both questions in the affirmative. Thereupon Freeman, by the surrender of his mili-

tary land bounty warrant, became the equitable owner of the land in controversy and entitled to a patent therefor. The land then became segregated from the public domain and no further act or omission of the land office or department of the interior could affect the rights of said Freeman or those claiming under him.

The case at bar is identical in many respects with the case of *Widdicombe* v. *Childers*, 124 U. S., 400. There the applicant, by mistake, described the *southwest* quarter section 36, town 61, range 6, instead of the *southeast* quarter of the same section, and there, as here, Mr. Widdicombe, 35 years after the original location discovered that a mistake had been made and proceeded to procure a patent for the southeast quarter himself. There, as here, there were mutilations of the records. The court ruled that Widdicombe was a purchaser in bad faith and that the equities of the prior locator and his grantees were superior to his and that he held the legal title as trustee for them.

The Court says:

"The mistake in this case does not appear to have been discovered by Smith, or those claiming under him, until after Widdicombe had got his patent, and after they had been in the undisputed enjoyment for thirty-five years and more of what they supposed was their own property under a completed purchase, with the price fully paid. Widdicombe, being a purchaser with full knowledge of their rights, was in law a purchaser in bad faith, and, as their equities were superior to his, they were enforceable against him, even though he had secured a patent vesting the legal title in himself. Under such circumstances, a court of chancery can charge him as trustee and compel a conveyance which shall convert the superior equity into a paramount legal title. The

cases to this effect are many and uniform. The holder of a legal title in bad faith must always yield to a superior equity. As against the United States his title may be good, but not as against one who had acquired a prior right from the United States in force when his purchase was made under which his patent issued. The patent vested him with the legal title, but it did not determine the equitable relations between him and third persons. *Townsend v. Greely*, 5 *Wall.*, 326, 335; *Silver v. Ladd*, 7 Wall., 219, 228; *Meader v. Norton*, 11 Wall., 442, 458; *Johnson v. Towsley*, 13 Wall., 72, 87; *Carpentier v. Montgomery*, 13 Wall., 480, 496; *Shepley v. Cowan*, 91 U. S., 330, 340; *Moore v. Robbins*, 96 U. S., 530, 535; *Wirth v. Branson*, 98 U. S., 118, 121; *Marquez v. Frisbie*, 101 U. S., 473, 475.

The case of *Hedrick* v. *Beeler*, 110 Mo., 91, is a counterpart of the present case. There the plaintiff Hedrick, acting through Widdicombe, obtained a patent from the government for the north half of the southeast quarter of section 36, township 66, *range 16*, in July, 1886. It appeared that in July, 1856, one Robert Mercer intended to enter and in fact did enter the same land at the land office at Milan, Mo., and that by a mistake of the register in the land office the entry was posted on the tract book erroneously describing the land as being in *range 19*, instead of *range 16*, and that the plaintiff obtained his patent with a full knowledge of these facts. There, as in the case at bar, there were mutilations and erasures in the records. It was, nevertheless, held, as is held by the Supreme Court of the State of Missouri, in the case at bar, that the plaintiff was a purchaser in bad faith and that his legal title must yield to the prior equity of the original locator and his grantees. The Court in passing upon the question says:

"The equitable principles which govern cases of this character are well settled and need only be abstractly stated. One who attempts to enter a particular tract of land, then vacant, and subject to entry, and, with the intention of doing so, pays his money, or deliver a warrant to the proper government officer, acquires an equity in the land, though the written application required to be made, by a mistake and error in writing it, should misdescribe the land, and wholly omit the tract intended, and this equity may be enforced against one who afterwards, with knowledge of the facts which establish the equity, obtains the legal title from the United States to the same land. As was said by Chief Justice Waite in *Widdicombe* v. *Childers*, 124 U. S., 404: 'Under such circumstances, a court of chancery can charge him as trustee and compel a conveyance which shall convert the superior equity into a paramount legal title. The cases to this effect are many and uniform. The holder of a legal title in bad faith must always yield to a superior equity. As against the United States his title may be good, but not as against one who had acquired a prior right from the United States in force when his purchase was made under which his patent issued. The patent vested him with the legal title but it did not determine the equitable relations between him and third persons.' See also authorities cited.

"When the legal title has passed from the United States to one party, and it ought to go to another, it is competent for the courts to declare the holder of such legal title a trustee and to compel a conveyance to the party who has the paramount equity. *Sensenderfer* v. *Kemp*, 83 Mo., 587; *Widdicombe* v. *Childers*, 84 Mo., 384.

"That Mercer intended to locate his land warrant upon the land in dispute and attempted to do so, and that the register of the land office at Milan received his warrant knowing his intention, is so well establishsd by the evidence that consideration of the question or comment upon the evidence is unnecessary. The indorsement made by the register across the tract on the plat book, and the entry made at the time on the tract book, are conclusive of the intention without resort to the positive testimony of Mercer himself to that effect."

In *Hedrick* v. *Stohl*, 105 Mo., 43, this same plaintiff, through his agent, Mr. Widdicombe, entered certain land in Ray county, Mo., at the land office at Boonville, in January, 1885, and received a patent therefor, in October, 1886. The same land had previously been entered by one McDonald in 1830. There were certain erasures and entries upon the books at the land office which the plaintiff claimed indicated that McDonald had withdrawn his entry made in 1830. The Court, however, held that there had in fact been no withdrawal, and rendered its decree in favor of those claiming under McDonald.

If Freeman, in 1856, intended to enter the tract of land in range 14, and supposed he had in fact entered such tract, but by mistake the application misdescribed the land, as found by the state courts, then as plaintiff in error Hedrick made his location with a knowledge of these facts, (and the state courts found that he had such knowledge), the rights of Freeman and his grantees are superior to the rights of the plaintiff in error. This proposition is so well settled and so well fortified by repeatod adjudications of this Court, that we only refer the Court for further comment to the following cases:

Wirth v. *Branson*, 98 U. S., 118;
Branson v. *Wirth*, 17 Wall., 32;
Moore v. *Robbins*, 96 U. S., 530;
Stark v. *Starrs*, 6 Wall., 402.

Taking then the facts as found by the State Supreme Court, and the State Circuit Court, and applying to such facts the well settled rules of law and equity applicable thereto, we respectfully submit that the judgment of the State Court must be affirmed.

III.

Should this Court examine the facts in the record it must necessarily reach the same conclusion as the State Courts.

While we confidently believe that this Court will accept as a finality the finding of facts made by the State Courts, evidenced by the decree, yet we desire to marshal the evidence in the case for the purpose of demonstrating that no other findings of fact could be made than were made by the State Courts.

It is unquestioned that at the time the location was made by Freeman, the following certificate of location was issued by the register of the land office at Milan, Mo., (Transcript, page 35).

"Military Bounty Land Act of March 3, 1855.

Milan, Mo., Register's Office, July 25th, 1856.

Military land warrant No. 8470, in the name of Thomas Hueldkeld has this day been located by Cavil M. Freeman, upon the W. $\frac{1}{2}$, S. E. $\frac{1}{4}$ of section 28, in township 61, of range 14, subject to any pre-emption claim which may be filed for said land within forty days from this date.

Contents of tract located, 80 acres.

J. Seaman, Register."

It is unquestioned that as late as 1866, when the land office at Boonville certified to Adair county the entries upon its land books, the location, made by Cavil M. Freeman, July 25, 1856, appears as having been made on the west half of the southeast quarter of section 28, township 61, range 14 (Transcript, page 36).

There is no doubt that, at the time of the location of Freeman's entry in range 14, it was posted upon the tract,

books for section 28, township 61, range 14, in its appropriate and proper place. The mutilations that have been made upon the tract book, in reference to said entry, will be considered later on. (Transcript, page 74).

The monthly abstract of locations made in the land office at Milan, in the month of July, 1856, shows the entry of Freeman in range 14 (Transcript, p. 76). It is true that this exhibit in its present mutilated condition shows the location in range 17, but upon referring to the testimony of Mr. Park (Transcript, p. 46), we find that before the books were tampered with, the range number was 14, and that the figure 4, has been erased or partially erased and figure 7 inserted.

Turning now to the tract-book of range 17, we assert without fear of successful contradiction, that no notation, in respect to the Freeman entry was made on the tract-book of range 17, at the time of Freeman's location. The Pitt Cooke location was made in May, 1857, ten months after the Freeman location. The Pitt Cooke location was the entry of the southeast quarter section 28, township 61, range 17. As the Pitt Cooke location covered the west half of the southeast quarter it is impossible that the Freeman location could have been noted on the tract-book of range 17, in May, 1857, as the entries obviously conflict.

We find, then, that in July, 1856, Freeman made a location, the certificate of which stated that it was in range 14. It was at the same time noted upon the tract-book as being in range 14; upon the plat-book as being in range 14; upon the monthly abstract as being in range 14; and that it was not at the time noted in range 17.

Coming now to the mutilations and erasures of the record, let us see what importance is to be attached to them. It is unquestioned that the entry in Exhibit B, (Transcript, p. 74), "West half of the southeast quarter of section 28, township 61, range 14, Cavil M. Freeman, Ass. of Thomas Huelkeld, military land warrant number 8470, act of March 3, 1855, July 25, 1856," stood in that shape upon the records at least as late at 1875, for the reason that the notation appears to be in the handwriting of Mr. Reiche, whose term as register did not begin until 1875; and it is exceedingly probable that the entry stood as above stated, until a much later date. (Transcript, page 55).

Turning now to the testimony of Mr. Park, (Transcript, page 45), we find that he examined this entry in 1887, and that the entry was as above stated, without any erasure, interlineation or notation. In 1890 he again examined this entry upon the tract book, and found that there had been an erasure, and that the words "belongs to R 17" had been inserted.

We conclude, therefore, that so far as the tract book is concerned the original entry of Freeman made in July, 1856, continued upon the tract book without erasure, interlineation or notation of any kind until some time after January, 1887.

Turning now to to the plat book of range 14, we find that at the time that Mr. Park visited the land office in January, 1887, the notation on the west half of the southeast quarter of section 28, township 61, range 14, was simply this, "Cavil M. Freeman, July 25, 1856." In 1890, upon inspecting this same plat, the Freeman entry had been

erased, a great many unintelligible marks and figures made upon the plat, and it then appeared as shown in exhibit C (Transcript, page 77.) We conclude, therefore, that the plat book of the land in controversy has been changed, mutulated and made unintelligible since 1887.

Referring now to the tract book for range 17, exhibit F, (Transcript, page 75). it appears from the testimony of Mr. Park, that the Freeman entry in range 17, had the same appearance as to age, color, freshness and handwriting as the Vancleve entry, which was made September 19, 1885, from which it is fair to conclude that the two entries were made about the same time.

By reference to plat book of range 17, we find that as late as 1866, the name of Freeman did not appear upon this plat (Transcript, page 61), as the certified copy of the plat, made at that time, shows the entry of the southeast quarter of section 28, township 61, range 17, entered in the name of Pitt Cooke May 21st, 1857.

Hoge, the receiver of the Boonville land office, testified that the Vancleve entry of 1885 and the Freeman entry were in the same handwriting.

The necessary conclusion from these facts is that Freeman supposed he had entered the land in controversy. The land was assessed to him in 1857. He sold it to Lane in 1860, and the latter paid the back taxes on it and also paid taxes on it from the year 1861 to 1876 inclusive. (Transcript, pages 39 and 40.) William Lane sold the land in 1875 to one Parcell, who went into possession of it at once, made improvements upon it, and he and his grantees continued in possession of the land, pay-

ing taxes and maintaining improvements thereon up to the time of the commencement of this action.

We submit that the foregoing facts may be summed up as follows:

1. Freeman intended to enter the land in controversy, and the land officers consented thereto, issuing to him a certificate for the land in controversy and making the requisite notations upon the various books and records in the land office, in respect to the land in controversy, but making no records in respect to the land in range 17.

2. That the records continued in this condition, certainly until after 1875, and in all probability until after 1887, when changes, mutilations and erasures were made in the interest of the plaintiff in error.

Let us now examine the evidence offered by the plaintiff in error in support of his claim. Plaintiff offered a *certified copy* of the original certificate of location, made with warrant 8470 for 80 acres of land, act 1855, in favor of Cavil M. Freeman. This certified copy recites, that the location is upon land in range 17. This is obviously a clerical error. It may have been the error of the register in filling out the location; it may have been an error of some clerk in the land office at Washington in copying the application, or the error may have been occasioned by the similarity of an old fashioned figure 4, with the figure 7.

Plaintiff offered in evidence exhibit "I," which is a certified copy of a letter from the commissioner of the general land office, dated January 12, 1861, to the register and receiver at Boonville, Mo., as follows, to-wit:

"GENERAL LAND OFFICE, January 12, 1861.

Gentlemen: The location made at Milan, Missouri, May 21, 1857, by Pitt Cooke, of Erie county, Ohio, upon the S. E. ¼ of Section 28, Township 61, Range 17, with land warrant No. 7709, for 160 acres, act of 1855, has been cancelled for the reason that the west half of south-east quarter of Section 28, T. 61, R. 17, was located July 25th, 1856, with land warrant No. 8470, for 80 acres, act 1855.

You will make proper notes upon the books and plats of your office, referring to this letter by its date.

The duplicate of location having been surrendered to this office by Pitt Cooke, land warrant 7709 has been returned to him.

Very respectfully, your obdt. servt.,

JOS. S. WILSON, *Commissioner.*"

It will be observed that this letter proceeds upon the apparent belief in the general land office at Washington, that the Freeman location was in range 17, as the letter is dated January 12, 1861, but no notations were made and no attention was paid to the letter at that time, for, as heretofore shown, the books remained the same, showing the location of the land in controversy by Freeman, for many years thereafter. The letter is, of course, based upon the error in the application of Freeman or in the transcript of said application in the land office at Washington.

If any further proof is necessary to show that the records in the land office in January, 1887, indicated the location by Freeman of the land in controversy, it is to be found in the letter of the assistant commissioner to the register and receiver at Boonville, Mo., dated February 15, 1887, being plaintiff's exhibit "J," in which the following language is used:

"I am in receipt of your letter of January 27, 1887,

stating that your records show that the west half of the southeast quarter of section 28, township 61, range 14, was located by Cavil M. Freeman, July 25, 1856, per warrant 8740, act 1855, and that you were shown an abstract of title from the records of Adair County, Mo., a regular chain from the said Freeman to the present occupant of the land, Mr. James H. Saunders."

The letter also proceeds to direct the register and receiver to have the records agree with the record in Washington, showing location by Freeman in range 17.

Exhibit "K" offered by the plaintiff is a letter from the general land office, stating that the patent for the west half of the southeast quarter of section 28, township 61, range 17, in favor of Cavil M. Freeman, was transmitted to Messrs. Young and Niles, Washington, D. C., March 23rd, 1860.

We submit that there is nothing in the evidence offered by plaintiff, which casts any doubt upon the genuineness of the location made by Freeman in 1856, upon the land in controversy. It simply shows a mistake of the officers at Milan in filling in the application, or a mistake in copying or transcribing it in the office at Washington, and the subsequent action of the department at Washington is based entirely upon this error. We assert with confidence, that the Court will not find one syllable in the record, which by any rational interpretation indicates that Freeman intended to enter the land in range 17.

It appears from the testimony that Mr. Widdicombe, who made the location for Mr. Hedrick, the plaintiff in error, was a sharp, shrewd lawyer, and had for 16 or 20 years practiced in the land office at Boonville, and was thoroughly familiar with all the records. He admits

(Transcript, page 56), that he knew the condition of the records in reference to the land in controvery, and had full knowledge of their condition. Before making the location, he knew nothing about the land in controversy as to its location or value. He made the location for Mr. Hedrick, his father-in-law, without the latter's request, but in his interest. The letter of January, 1861, which was the first communication from the land department at Washington, indicating that the records there did not agree with the records at the local land office, was placed in the files and not acted upon at the time. It was Mr. Widdicombe's suggestion, as he admits (Transcript, pages 59 and 60), that brought this letter from its place of concealment and caused it to be acted upon at a much later date. Mr. Widdicombe then saw that there had been a technical mistake and variance between the application as shown by the Washington records and the actual location as made. In this, as in many other cases which have reached the appellate courts, and have become a part of our legal literature, Mr. Widdicombe conceived the plan of taking advantage of this technical error, by making a location for himself or for his father-in-law. It is not an unjust inference, from the record in this case, to say that for the accomplishment of this purpose, the records in the land office at Boonville had to be changed, erasures had to be made, interlineations and new entries inserted. Whether the handwriting was that of Mr. Reiche, or of some other person, we are warranted in saying that some one acting in the interest of Mr. Widdicombe was the author of the changes made. The same general plan is pursued in this case, as the court

records indicate have been pursued in other cases. Searching through the records, some one discovers a technical error in the location of land occupied and apparently owned by the original locator or his grantees for a period of 25 or 30 years; with a keenness more acute than creditable, he apparently sees a plan by which the fruits of other men's labors can be appropriated to himself. Slight changes in the records only are necessary; these are made; he then files the application for a patent, which in due time issues; and then, fortified with the legal title, he proceeds against the rightful owners.

If there ever was a case of purchaser in bad faith, without the slightest claim to consideration by a court of equity, we submit it is furnished in the present instance. It is impossible for the Court to read the record, falsified as it is, as our Supreme Court justly said, without reaching the conclusion that Freeman intended to locate the land in controversy, and that the plaintiff in error, through his agent, Mr. Widdicombe, is a purchaser in bad faith, and with a full knowledge of all the circumstances.

IV.

The contention of plaintiff in error, that the remedy by proceeding before the land office, as provided by statute, is exclusive, is contrary to the well settled rule in this Court.

When the patent once issues, the jurisdiction of the land office over the matter is at an end. Thenceforth the adjustment of equitable rights must be determined by application to a court of equity. The rule is thus stated in *Felix* v. *Patrick*, 145 U. S. (317), 328, as follows:

"The substance of these authorities is that, whenever a person obtains the legal title to land by any artifice or concealment, or by making use of facilities intended for the benefit of another, a court of equity will impress upon the lands so held by him a trust in favor of the party who is justly entitled to them, and will order the trust executed by decreeing their conveyance to the party in whose favor the trust was created. It is of no consequence in this connection that Sophia Felix was ignorant of the defendant's acts, or of the trust thereby created, since she was at liberty, upon discovering it, to affirm the trust and enforce its execution. *Bank of Metropolis v. Guttschlick*, 14 Pet., 19, 31; *Moses v. Murgatroyd*, 1 Johns. Ch., 119; *Cumberland v. Codrington*, 3 Johns. Ch., 229, 261; *Neilson v. Blight*, 1 Johns. Cas., 205; *Weston v. Barker*, 12 Johns., 276."

See also:

Hardin v. *Jordan*, 140 U. S. (371), 401;
Davis, Admr. v. *Weibold*, 139 U. S., (507) 529;
Knight v. *U. S. Land Ass'n.*, 142 U. S., 161;
Wirth v. *Branson*, 98 U. S., (118) 122;
Re Geo. F. Emblen, 161 U. S., (52) 56;
Turner v. *Sawyer*, 150 U. S., 578.

V.

Certified copies of the plats or tracts of land are competent testimony and a sufficient showing of title to permit a recovery.

Payne v. *Lott*, 90 Mo., 676;
Wilhite v. *Barr*, 67 Mo., 234.

We respectfully submit that the judgment and decree of the State Court should be affirmed.

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